

UNITED REPUBLIC OF TANZANIA



PUBLIC PROCUREMENT REGULATORY AUTHORITY

TRAINING HANDBOOK

IN PROCUREMENT AUDIT SKILLS

FOR INTERNAL AUDITORS OF

LOCAL GOVERNMENT AUTHORITIES

VERSION 1.2

DECEMBER, 2016



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FOREWORD

Decentralization has been one of the major policy initiatives of the Government of the United Republic of Tanzania. The most recent policy reform commenced two decades ago and was formulated in 1998 as Decentralisation-by-Devolution (D-by-D). The policy has the main objective to empower citizens, devolve fiscal resources, democratize state power and facilitate effective service delivery in our communities to improving people's welfare. It is also intended to improve transparency and accountability in Local governments, promote good governance and participatory democracy.

Under the decentralization policy, a range of powers, responsibilities and functions are transferred to Local Government Authorities at Council and sub-Council levels. Besides the responsibility of planning, mobilising, allocating and managing fiscal resources, the function of procurement and contracts management was fully transferred to Local Governments as entrenched in the Public Procurement Act (PPA) of 2004 and subsequent revisions made under PPA 2011 and amended in 2016.

In the course of implementing public procurement reform, we have realized that many Local Government Authorities - which constitute around one-third of all Procuring Entities in Tanzania- do not have adequate capacity for internal quality assurance, controls and monitoring of Procurement and Contract Management.

Experience of the Authority in procurement monitoring and audits also shows that notwithstanding major achievements, the internal audit of procurement and contracts management of the Local Government Authorities is yet to receive the required priority and resources at operational and strategic levels. Hence, there is need to equip internal auditors with a set of risk-based audit tools to provide adequate controls in the use and application of procurement law, regulations, procedures, processes, roles, responsibilities, tools and systems. The aim is to strengthen internal controls for improved compliance and performance to procurement standards and ultimately attain Value-for-Money of LGA procurement.

Against this background, the Authority - in close collaboration with the Internal Auditor General for Local Government and the President's Office, Regional Administration and Local Government - has developed this training handbook in procurement audit skills for Internal Auditors of Local Government Authorities. The handbook was used in the training of internal auditors of 28 selected LGAs and the training experience integrated in this version of the handbook.

The PPRA intends to make the handbook available for trainings of Internal Audit Units of all LGAs and for dissemination through its website and/or e-learning platform in the near future. However, it should be used together with the Constitution, the Public Procurement Act and its Regulations, Local Government Finance Act, and any legislation relevant to a particular subject or topic.

Finally, we wish to express our deep appreciations and gratitude to our partners and collaborators in the invaluable assistance they gave the Authority in developing, roll-out and final production of the training handbook. The handbook is one the main outputs of the Enhancement of Procurement Capacity of Local Government Authorities Project (EPC-LGAP),

which was jointly implemented from 2013 to 2017 by the PPRA and the Belgian Development Agency (BTC) in partnership with the President's Office - Regional Government and Local Government (PO-RALG).

The Authority invites stakeholders to provide feedback on the use of the training handbook and undertakes to provide any clarification where required to support capacity building and improvement of internal control and quality assurance of procurement and contract management in the Local Governments.

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ABBREVIATIONS

APP	Annual Procurement Plan
BTC	Belgian Development Agency
CPI	Compliance and Performance Indicators
DC	District Council
EPC-LGAP	Enhancement of Procurement Capacity of Local Government Authorities Project
IAG	Internal Auditor General
GN	Government Notice
GPSA	Government Procurement Services Agency
VfM	Value for Money
PE	Procuring Entity
PMU	Procurement Management Unit
PO-RALG	President’s Office Regional Administration and Local Government
PPA	Public Procurement Act
PPAA	Public Procurement Appeals Authority
PPPD	Public Procurement Policy Division
PPRA	Public Procurement Regulatory Authority
PSDP	Procurement Skills Development Plans
PSPTB	Procurement and Supplies Professionals and Technicians Board
UNICTRAL	United Nations Commission on International Trade Law

1. INTRODUCTION TO PUBLIC PROCUREMENT, GENERAL PRINCIPLES AND PRACTICES

1.1 Procurement – General Definition

Procurement is the acquisition of appropriate goods, works and/or services at the best possible **total cost of ownership** to meet the needs of the public entity in terms of quality, quantity, time, and delivery.

PPA 2011-S.3, Defines “**Procurement**” as “buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity spending public funds on behalf of a ministry, department or regional administration of the Government or public body and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation and award of contracts;”

Procurement as a function should ensure acquisition of the right goods (equipment, material, consumables), works (construction, repairs, rehabilitation), and services (individual consultants, consulting firms, training, workshops) required to satisfy certain needs at the right time, from the right supplier or service provider, in the right quantities, in the right quality, and at the right price.

Public procurement enables Public Institutions defined in **PPA 2011-S.3**, to procure inputs which are vital for their operations and investments. The procured inputs can be in the form of physical infrastructure built or in strengthened institutional and human capacities, both of which lay foundations for national development.

In procurement terms and in line with the PPA 2011 and its Regulations, those inputs are generally grouped into four main categories as follows:

Works – which include:

- (a) all work associated with the construction, reconstruction demolition, repair or renovation of a building, structure, road or airfield; and
- (b) any other civil works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;
- (c) services which are tendered and contracted on the basis of performance of a measurable physical output such as transport of people or goods, drilling, mapping, photography or seismic investigations.

Generally contracts which include the provision of works and services shall be regarded as works contracts if the total value of the works is greater than the value of the service covered by the contract.

Goods - which includes: Raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to

the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;

Consultancy services - : means activities of an intellectual and advisory nature that do not lead to a measurable physical output and includes design, supervision, training, advisory, auditing, software development and similar services.

Non-consultancy service: which includes: any object of procurement other than goods, works and consultancy services. It includes services of a skilled or non-skilled nature, which is not a consultancy service and includes, but is not limited to, cleaning, security, maintenance, and repair services; and

1.2 Strategic Importance of Procurement to Public Entities

All public entities defined in Section **PPA 2011-S.3** require various inputs to enable them deliver services to the people. These include various physical infrastructure such as roads, water supply mains, school buildings, hospital buildings etc; goods such as vehicles, books, medicines, furniture etc; consultancy services such as design of buildings, conducting of feasibility studies, management and advisory services etc; and non- consultancy services such as security, cleaning services etc. The quality, timeliness, local appropriateness and affordability of these procured inputs by the public entity can largely determine whether the public investments and operations will succeed or fail.

Refer to the definition of Procuring Entity and Public Body in PPA 2011-S.3

Globally procurement accounts for roughly sixty to eighty percent of most budgets of public institutions. This amount of financial resources cannot be ignored as such resources are scarce and ought to be put into good use by creating value to the public entity.

Public procurement provides the largest domestic market and it is a bridge between the public and private sector. It is a means of providing public entities with inputs they require to fulfil their mandate and at the same time it is a means that enables the private sector to do business with the public entities. Therefore a good procurement system benefits both the public and private sector as well as ensuring that goods and services reach the citizens for whom they are intended. A good procurement system will ensure better contract performance and improved development outcomes for all.

It is important to appreciate that procurement is a process that takes time, and for this reasons it has sometimes been dubbed as bureaucratic, slow etc. Much time is spent in the procurement planning and tendering processes, but equally important is the time spent in contract implementation and management. Much of the procurement process is supposed to be highly visible, and when this is not the case, controversy, finger pointing is apparent and exposes those involved in the procurement process (public and non-public officials) to scrutiny and second-guessing for procurement choices they made, deferred or discarded.

1.3 Guiding Principles of Public Procurement in Tanzania

The public procurement policies are based on the need to make the best possible use of public funds, whilst conducting all procurement with honesty and fairness. The overall objective of the public procurement system is to provide value for money to the

Government by ensuring that public funds are spent in a transparent, efficient and fair manner.

All public officers and members of Tender Boards undertaking or approving procurement actions are guided by the following basic considerations of the public procurement policy in Tanzania: -

Refer to PPA 2011-S.47

- (a) The need for economy and efficiency in the use of public funds and in the implementation of projects including the provision of related goods and services;

Economy: Procurement is a process that is aimed at providing the procuring entity best value for the money spent. For complex purchases, value may imply more than just price. Other factors such as quality and delivery and appropriateness (just to mention a few) also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

Efficiency: The best public procurement system is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the procuring entity and the procurement personnel in its employ.

The promotion of economy, efficiency and value for money practices is fundamental to any good public procurement system. Diligent application of principles of value for money and economic efficiency can bring substantial savings of public funds. Savings can either be in the form of direct savings obtained through cheaper prices for goods or services or can be in the form of indirect savings obtained through provision of quality goods or services thus eliminating the need of redoing. PE are therefore encouraged to adopt procurement practices that promote fair competition in all tenders, discourage the use of fake competition; and use methods of aggregation where appropriate in order to take advantage of economies of scale.

- (b) The best interests of the procuring entity, in providing all eligible suppliers, contractors, and service providers as per the requirements of the PPA 2004, equal opportunities to compete in the provision of goods, executing works or providing services;

Equal Opportunities: Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the purchaser's options and opportunities

- (c) Encouragement of national manufacturing, contracting and service industries;

Encouragement through Preference Schemes: Local manufacturing, contracting and service industries are given preference in bidding for public

contracts so as to boost the national economy. Goods being procured are “manufactured goods” involving assembly, fabrication, processing etc., where a commercially-recognized final product is substantially different in basic characteristics of its components and raw materials. As for services, local service providers may either bid alone or in joint venture with fellow Tanzanian or foreign firms to qualify for the preference.

- (d) The importance of integrity, accountability, fairness and transparency in the procurement process.

Integrity and Accountability: Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

Ethical issues are amongst some of the obstacles in achieving value for money. People involved in procurement should ensure the following: avoidance of collusion, avoidance of conflict of interest, provision of equal opportunities, confidentiality and limited disclosure, avoidance of all corrupt practices in procurement, avoidance of all fraudulent practice in procurement, avoidance of obstruction and undue delay in procurement processing and exerting inappropriate influence on any procurement procedure.

Transparency: Good procurement should also be seen to be transparent and fair. The policy establishes and then maintains rules and procedures that are accessible and unambiguous to all parties in the process. The procurement process should not only be fair, but should be seen to be fair.

Promotion of transparency in procurement can act as deterrence for corruption. PPA 2011 and its Regulations require that all PEs to the extent possible make their procurement proceedings transparent through public advertisement of tenders and disclosure of the procurement proceedings, a task which is assigned to PMUS. PEs are therefore required to keep procurement records. To facilitate this PEs are required to maintain a complete record of the procurement proceedings, which may be made available to any person after the tender has been awarded with a requirement to avoid disclosure of proprietary commercial information.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified bidders, contractors, service providers and consultants. This directly and concretely benefits the PE, responsive contractors, suppliers, service providers, consultants, the Government and other development partners.

A procurement system that does not embrace the above elements stimulates hesitation to compete, submission of inflated bids/proposals containing risk premium, or submission of deflated bids/proposals followed by delayed or defective performance during the contract

implementation stage. A poor procurement system may also result in bidders/consultants colluding to defraud the government and other procuring public bodies, bribery by frustrated or unscrupulous bidders and consultants, bad value for those entities and betrayal and abuse of the public trust for personal gain.

In summary a sound procurement system must ensure that there is economy and efficiency; it provides equal opportunities and preference to local firms; it embraces integrity, accountability, fairness and transparent in the procurement process. A procurement system that does not contain these basic principles stimulates hesitations of potential bidders to compete, submission of inflated bids/proposals containing a risk premium, or submission of deflated bids/proposals followed by delayed or defective performance during the contract implementation stage. A poor procurement system may also result in bidders/consultants colluding to defraud the government and other procuring public bodies, bribery by frustrated or unscrupulous bidders and consultants, bad value for those entities and betrayal and abuse of the public trust for personal gain.

1.4 Regulatory Framework of Public Procurement in Tanzania

1.4.1 Overview

The regulatory framework for procurement in Tanzania is basically hinged on the following:

- (a) The Public Procurement Act No. 7 of 2011 as amended in 2016;
- (b) The Public Procurement) Regulations GN. No 446 of 2013;
- (c) Local Government Tender Boards (Establishment and Proceedings) Regulations GN. No. 330 of 2014;
- (d) Standard Tender and Proposal Documents
- (e) Tender/Proposal/Quotation Evaluation Guidelines
- (f) Guidelines for Preparation of Responsive bids
- (g) Procedural Forms as issued by PPRA
- (h) Other Circulars periodically issued by the PPRA

The backbone of the regulatory framework is the PPA 2011 and its regulations on procurement of goods, works, non-consultant services and disposal of public assets by tender and employment and selection of consultants. This framework is summarised in **Figure 1.1**.

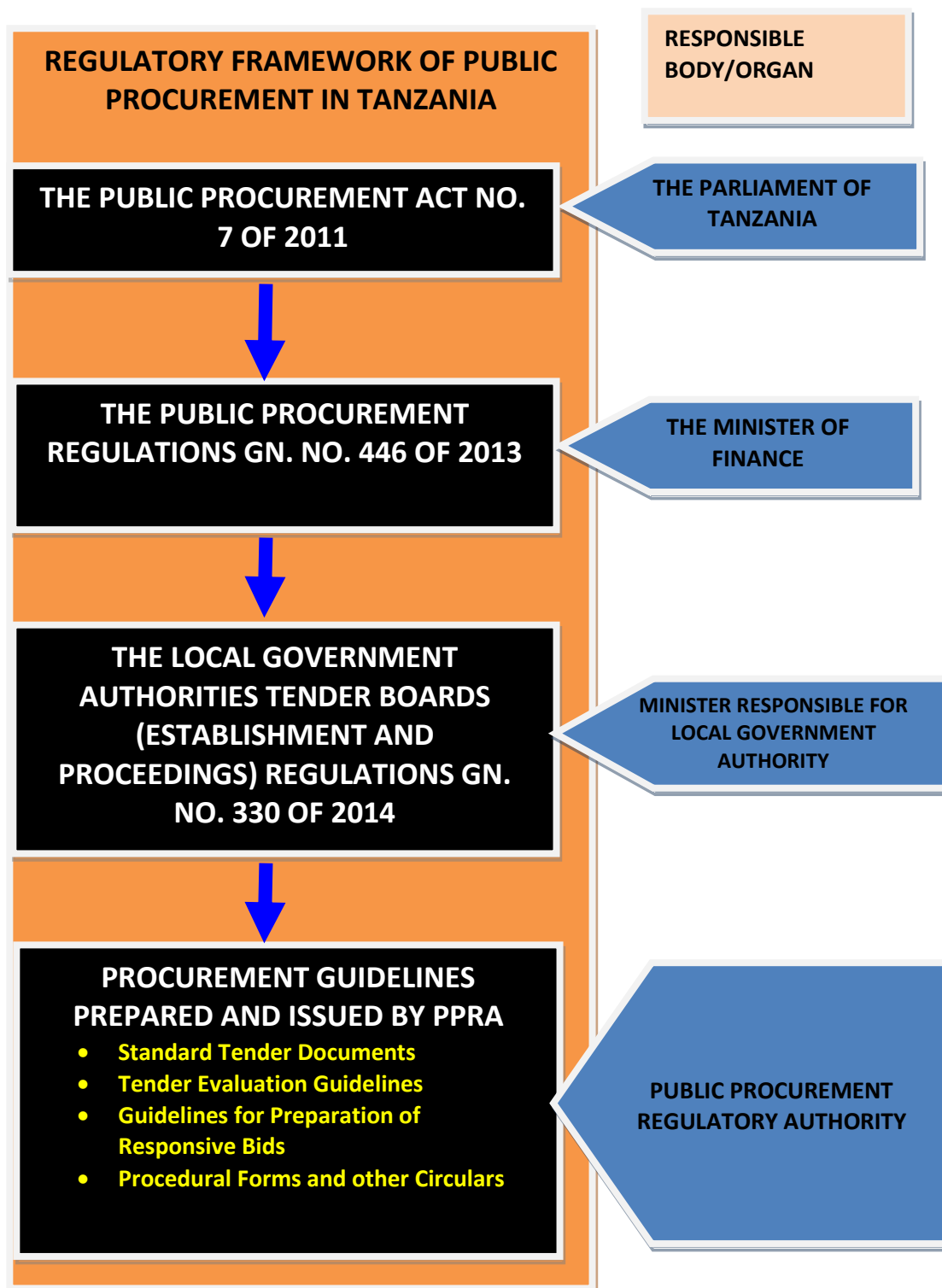


Figure 1.1: Regulatory Framework of Public Procurement in Tanzania

1.4.2 The Public Procurement Act No. 7 of 2011

The PPA 2011 is an Act that repealed the Public Procurement Act, 2004 with a view to make better provisions for the regulation of Public Procurement in the Government of the United Republic and to provide for other related matters.

According to PPA 2011-S. 2(1), the Act applies to the following:

- a) All procurement and disposal by tender undertaken by a procuring entity except where it is provided otherwise in this Act;
- b) non-Government entities, for procurement financed from specific public finances; and
- c) Public Private Partnership projects, in their relevant stages.

1.4.3 The Public Procurement Regulations GN No 446 of 2013

These regulations came into force on 15th December 2014 and they repealed The Public Procurement (Goods, Works, Non-Consultant Services and Disposal of Public Assets by Tender) Regulations GN. No 97 of 2005 and the Public Procurement (Employment and Selection of Consultants) Regulations GN. No 98 of 2005. They are applicable to:

- all procurement of goods, works and non - consultant services undertaken by a procuring entity except where the context provide otherwise in which case the provisions of the Act shall prevail;
- Selection and Employment of Consultants;
- Disposal of Public Assets by Tender; and
- Procurement under public private partnership.

The regulations have been formulated in accordance with **PPA 2011-S.105** and they amplify the provision of the Act with regard to procurement principles and how to carry out procurement.

1.4.4 Local Government Tender Board (Establishment and Proceedings) GN No. 330 of 2014

These Regulations published on 12th September 2014 repealed the Local Government Tender Board (Establishment and Proceedings) GN No.177 Regulations of 2007. The regulations were prepared for the purpose of setting out the procedures for the establishment and conduct of LGAs TB. These Regulations have been formulated in accordance with PPA 2011-S.31 (3).

1.4.5 Public Procurement (Amendment) Act of 2017

The Public Procurement (Amendment) Act 2016 was issued in June 2016 with the following main objectives:

- More prudent use of market prices;
- Reduced procurement process and transaction costs;
- Increased opportunity for participation of special social groups e.g. women, youth, elderly, people with disabilities;
- Promotion of industrial development by emphasizing 'local content' and using locally produced raw materials, products and services;
- Establishing and adopting Government approved standards for items and services for Procuring Entities (PE); and
- Making special procedures for commercial oriented entities to procure inputs of production.

1.4.6 Procurement Guidelines

PPA 2011-S.9(1)(e)&106 mandates PPRA to prepare and issue guidelines from time to time for the better carrying out of the objectives or any functions under the Act. In line with these provisions, the PPRA has prepared various guidelines which are discussed below:

Standard Tender and Proposal Documents

PPA 2011-S.70 has a mandatory requirement that all PEs undertaking Procurement in Tanzania use the appropriate standard model tender documents as prepared and issued by the PPRA. The Standard Tendering Documents [STDs] shall generally be worded so as to permit and encourage competition and shall set forth clearly and precisely all the information necessary for a prospective tenderer/consultant to prepare tender for the goods, works, non-consultant services or proposal for consultancy services to be provided.

The Standard Tendering and Proposal Documents are aimed at providing Procuring Entities with common standard draft documents containing basic contractual provisions and safeguards which are required by the Government of Tanzania in the execution of public procurement and the use of public funds.

The STDs and Standard Request for Proposals (SRFP) are specifically aimed at achieving the following:

- a) Increasing predictability and uniformity in the tender and selection process,
- b) Increasing efficiency of the tender and selection process and reduce costs,
- c) Reducing unresponsive bids and proposals and thus increasing competition; and
- d) Reducing preparation and review time.

For the procurement of goods, works and Non Consultant services, the STDs require the minimum of changes and are user friendly. Changes to the STDs are introduced through the Tender Data Sheet (TDS), Special Conditions of Contract (SCC). The

Bidding document will also require the PE to include such aspects as the Specifications, Scope of Work, Bills of Quantities and Technical/Engineering drawings (for works contracts).

While Selecting and Employing Consultants in Public Financed contracts, the use of the Standard Request for Proposal (SRFP) is based upon internationally acceptable model formats, which have been adapted to suit the particular needs of procurement within Tanzania. The SRFP has 6 Sections, of which Section 1 (Instruction to Consultants) and Section 3 (General Conditions of Contract) must not be altered or modified under any circumstances.

The way in which a PE addresses its specific needs is through the information provided in the **Proposal Data Sheet (PDS)** and the **Special Conditions of Contract (SCC)** as well as in the detailed requirements of the procurement in the **Terms of Reference (TOR)**.

The SRFP, when properly completed will provide all the information that a Consultant needs in order to prepare and submit a viable proposal that provides a sound basis on which a Procuring Entity can fairly, transparently and accurately carry out an evaluation process on the proposals submitted by the Consultants.

Tender Evaluation Guidelines

The Standard Tender Evaluation Guideline has been prepared by the Public Procurement Regulatory Authority (PPRA) for use by public authorities and their implementing agencies in the evaluation of tenders, in accordance with the provisions of the GN. 446. The Standard Tender Evaluation Guideline is intended specifically to assist in the evaluation of tenders procured through International Competitive Tendering (ICT). The guideline is also useful, with appropriate modifications, for evaluation under National Competitive Tendering (NCT), International and National Shopping procedures.

Proposal Evaluation Guidelines

The guidelines sets out the format of a sample evaluation report that facilitates the evaluation of consultants' proposals and the subsequent review of the proposals by the tender boards. The use of the guideline is strongly recommended by the PPRA but not mandatory. The actual evaluation conducted by the PE shall conform to the requirements (criteria) as set out in the Request for Proposals provided to the consultants. It is expected that the evaluation will be carried out by competent, diligent and qualified personnel who are well knowledgeable in the subject matter of the consultancy and the procurement process that goes with it.

Guidelines for Preparation of Responsive bids

When Procuring Entities advertise for bid opportunities they aim at obtaining maximum competition from the bidders and realise Value for the money to be spent in the procurement/selection process. This can only be achieved if bidders submit

commercially and technically responsive bids or proposals, so that eventually they are compared on their price or quality as the case maybe.

The Guidelines for preparation of responsive bids/proposals are intended to assist bidders/consultants to prepare responsive bids/proposals in conformity with the bidding or RFP documents. In addition, bidders and consultants are required to read and understand the PPA 2011 and its Regulations

1.5 Qualification and Eligibility of Bidders

PPA 2011-S.51 (1) requires that all tenderers need to participate in procurement proceedings, have to qualify by meeting appropriate criteria set out in accordance with the Act and Regulations. Subsection 4 of the same section puts importance on the qualification criteria to be made known to and applied equally to all tenderers.

Internal Auditors, as part of their audit work, should ensure that Bidders awarded contracts meet qualifications and eligibility criteria in line with the provisions of the Law.

GN. 446-R.6 (2) requires PEs not deny pre-qualification, if required, to a firm for reasons other than legal capacity, financial capability and experience to successfully perform the contract. Circumstances under which pre-qualification may be denied are shown in **GN.446-R6 (3) & (4)**. For government owned enterprise may participate if the enterprise is legally and financially autonomous; operates under commercial law; and is registered by the relevant professional registration body or authority – **GN.446-R6 (5)**.

GN.446-R.9(5) requires an eligible tenderer to provide to the PE evidence of his eligibility, proof of compliance with the necessary legal, technical and financial requirements and their capability and, adequacy of resources to carry out the contract effectively.

1.6 Handling of Procurement Complaints

1.6.1 General Provisions

PPA 2011 has changed the complaints review process in which now any aggrieved tenderer shall be required to submit his complaint for review to the Accounting officer and if not satisfied, he shall be entitled to appeal to PPAA as shown in **Figure 1.2**. PPRA has now been taken off the complaints review process to enable it carry out its advisory role without potential of any conflict of interest. Under the new system, the accounting officer is required to give a decision in 14 days and is empowered to constitute an independent review panel from within or outside the organization to review the complaint and advise him. Further, the Act has provided sections which make PPAA independent from the Ministry of Finance – (**PPA 2011-S.88 to S.94**).

Refer to PPA 2011-S.95, 96 & 97

There is contradiction of what is provided in PPA 2011 and GN. No. 446, and GN. No. 330 with respect to handling of complaints particularly with regard to the following:

5. Including PPRA in the complaints review process – **GN. 330-R.44**;
6. Time given to the accounting officer to handle complaints – **GN. 330-R.43(3)**;

In accordance with of **PPA 2011-S.2 (5)**, the provisions of the Act are taken to prevail, and therefore in this section the provisions of the Act have are the ones being discussed.

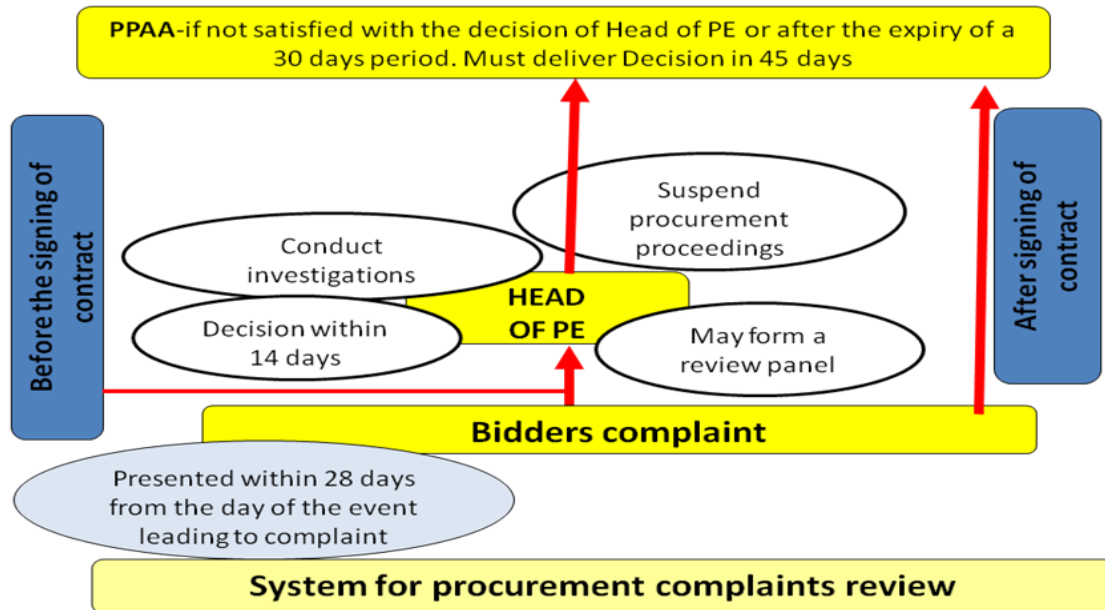


Figure 1.2: Procurement Complaints Review Procedure

1.6.2 Handling of Complaints at the PEs level

GN. 446-R.105 requires the bidder to submit an application for administrative review to the Accounting Officer of a PE within 28 days of becoming aware of the circumstances leading to the complaint or dispute.

It is important to note the following with regard to handling of procurement complaints at PE level as provided in PPA 2011 and GN. 446.

- (a) The Accounting Officer of a PE is not allowed to entertain a complaint after the contract has entered into force – **GN. 446-R.105(4)**;
- (b) The Accounting Officer of a PE, having received a complaint, must suspend procurement or disposal proceedings until he delivers a written decision on the complaint – **GN. 446-R.106(1)(a)**;
- (c) The Accounting Officer of a PE must notify all the participating bidders of the complaint and its substance within three days of receipt of such complaint and such bidders may opt to join in the proceedings by submitting written responses within three days of receiving the notification. Failure of participating bidders shall disqualify them from submitting the same complaint to the PE – **GN. 446-R. (106) (1) (b)**.
- (d) The PE may apply to PPRA to waive the need for suspension of procurement proceedings where there is urgent public interest in accordance with PPA 2011-S. 100(2) – **GN. 446-R.106(2)**;
- (e) Upon receipt of application for administrative review, the Accounting Officer shall conduct an investigation and shall be required to deliver a written decision to a complainant and other tenders who participated in the proceedings within 14

days. – **GN. 446-R.106 (3) & (6)**. The decision shall be copied to PPRA and the copy shall be submitted within seven days from the date of its delivery – **GN. 446-R.106(8)**;

- (f) The Accounting Officer may form a review panel to advise him on the submitted complaint in accordance with **PPA 2011-S.96 (2)** and the panel shall consist of people with expertise and experience in the subject of a compliant **GN. 446-R.106(4) & (5)**;
- (g) If the Accounting Officer fails to issue a decision within fourteen days, his competence to entertain a complaint shall cease and the bidder shall be free to lodge his complaint to PPAA. The same is applicable in a situation where the bidder is not satisfied with the decision of the Accounting Officer. In both cases, the submission of a complaint to PPAA shall be within fourteen days from the expiry of the period of determination of a complaint by the Accounting Officer or the date of communication of the decision.

1.6.3 Handling of Procurement Complaints at PPAA Level

Public Procurement Appeals Authority (PPAA) has been established by **PPA 2011-S.88**. According to the Act PPAA has original jurisdiction to hear and determine complaints against procuring entities where a procurement or disposal of contract is already in force and appeals arising from administrative decisions made by the accounting officer and shall review PPRA’s decision arising from blacklisting of tenderers - **GN. 446-R.107**.

Important things to note with regard to handling of procurement complaints at PPAA level:

- (a) The determination of procurement or disposal dispute by PPAA is guided by its rules made under **PPA 2011-S.105(2)(g)**
- (b) A tenderer may submit a complaint or dispute directly to PPAA if the complaint or dispute cannot be entertained under **PPA 2011-S.96** because of entry into force of the procurement or

Box 1.1 Remedies that may be issued by PPAA – PPA 2011-S.97 (5)

- a) declare the legal rules or principles that govern the subject matter;
- b) prohibit the PE from acting or deciding unlawfully or from following an unlawful procedure;
- c) require the PE that has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- d) annul in whole or in part an unlawful act or decision of the PE;
- e) revise an unlawful decision by the PE or substitute its own decision for such a decision; or
- f) require the payment of reasonable compensation to the tenderer submitting the complaint or dispute as a result of an unlawful act, decision or procedure

Internal Auditors, as part of their audit work, should ensure all complaints submitted by bidders are properly handled and the decisions given by the relevant complaints review body are

disposal contract, and provided that the complaint or dispute is submitted within fourteen days from the date of becoming aware of the circumstances giving rise to the complaint.

- (c) PPAA shall, upon receipt of a complaint or dispute, give notice of the complaint or dispute to the procuring entity in which case the PE shall be required to submit all the relevant documentations and information pertaining to the particular tender.
- (d) PPAA shall, within forty five days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any; and The decision of PPAA shall be final unless is subject for judicial review under **PPA 2011-S.101**. PPAA may provide remedies provided in **PPA 2011-S.97 (5)** reproduced in **Box 1.1**.
- (e) The decision of the PPAA shall be binding to the parties on the complaint or appeal and such decision may be enforced in any court of competent jurisdiction as if it were a decree of the court.
- (f) Any tenderer or any public body whose interest is or may be affected by the review proceedings, shall have a right to participate in the review proceedings and a tenderer who fails to participate in the review proceedings shall be barred from subsequently making the same claim.
- (g) PPRA upon receipt of reports of findings from the Accounting Officer or decision of PPAA, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the report or decision, as the case may be, in accordance with the provisions of this Act.

1.7 Preference Scheme to Local Firms

1.7.1 Introduction

Any good public procurement system should, as discussed in Module 1, have measures that promote the local players.

The participation of local firms in the public tenders is being hampered by lack of capacity in terms of capital, equipment, experience and human resources. The measures contained in the PPA 2011 and its Regulations to increase participation of local firms in the tender process are in three categories as follows:

- packaging (splitting) of contracts in sizes which allows the participation of small firms;
- setting aside contracts of up to a certain value to local firms only; and
- granting a margin of preference in favour of local firms in the tenders where they compete with foreign firms.

1.7.2 Eligibility to participate in the Preference Scheme

As a matter of principle, **PPA 2011-S.54 (2)** requires PEs when procuring goods, works or services of international or national bidding especially in evaluating and comparing bids, to grant margin of preference for the benefit of bids for goods manufactured, mined, extracted

or grown in the United Republic of Tanzania (URT) and works performed by Tanzanian contractors or services provided by Tanzanian Consultant. However, this requirement must have been clearly stipulated in the bid documents.

PPA 2011-S.54(3) provides that individual Tanzanian contractors or consultants are eligible for margin of preference if they meet the following criteria; they are incorporated or registered in the URT, at least fifty percent of the authorised capital of the company is owned either by the Government or by citizens of Tanzania, they do not subcontract more than ten percent of the contract price and there is no arrangements whereby major part of the net profit or other tangible benefits of the domestic company will accrue or be paid to persons not citizen of Tanzania or to companies which would not be eligible.

In case of joint ventures of local companies they must meet the following criteria; individual member companies are incorporated or registered in the URT, at least fifty percent of the ownership of individual companies are held by citizen of Tanzania, the joint venture itself is registered in Tanzania, do not subcontract more than ten percent of the contract excluding provisional sums to foreign firms and do not have arrangement whereby any major part of the profits will accrue or be paid to persons not citizen of Tanzania or to companies which would not be eligible.

For partners or individual persons trading as contractors or consultants, they must meet criteria such as; the majority of capital shares are held by citizen of Tanzania and the partners or individual persons shall not subcontract more than ten percent of the contract price excluding provisional sums, to foreign firms, partners or individual.

Box 1.1: Preference Scheme for Local Suppliers, Contractors, Consultants and Service Providers-9th & 13th Schedule GN. 446

A: Margin of Preference in favour of local contractors or service providers, or association between local and foreign contractors or service providers under national and international competitive tendering.

(a)	Margin of Preference under National and International competitive tendering for local contractors or service providers.	Margin of preference shall be 10%
(b)	Margin of Preference under National and International competitive tendering or selection for association of local and foreign contractors service providers.	
Input of foreign contractors, consultants or service providers. in the association either in the form of joint venture or subcontracting arrangements.	50-70%	Margin of preference shall be 6%
	25 -49%	Margin of preference shall be 8%
	0 -24%	Margin of preference shall be 10%

The Authority shall in consultation with various industry stakeholders prepare guidelines to determine the level of input of foreign contractors, consultants or service providers in the association, and as part of the registration for eligibility to the preference scheme shall determine the margin of preference which shall be granted to a particular association between local and foreign contractors, consultants or service providers.

B: Margin of Preference for goods mined or manufactured in Tanzania shall be 15%.

1.7.3 National Preferences

PPA 2011-S.54 makes it mandatory to a PE (when procuring goods, works or services by means of international or national tendering) to grant a margin of preference for the benefit of local players

Margin of preference of up to 10 percent in favour of local firms for works, consultancy and non-consultancy services is provided in **GN. 446-R.34** and amplified in the 9th and 13th Schedule. The applicable preference depends also to the input of foreign firms in the

association with local firms either through joint venture and subcontracting arrangements as shown in **Box 1.1**. A preference of 15% with regard to domestically manufactured or produced goods has been provided in **GN. 446-R.37**.

The inclusion of local firms and experts in consultancy assignments has been covered in **GN.446-R.35**, through apportioning of maximum weight of 15% and 10% in the criteria for participation of local firms and national experts in the assignment respectively. Similarly the use of local experts in works and non-consultancy services is covered in **GN. 446-R.36**, and PPRA is required to issue guidelines which will address how inclusion of key local staff in the assignments and the use of locally manufactures, produced or mined materials will be taken into account.

1.7.4 Exclusive Preference

PPA 2011-S.54 provides for exclusive preference, i.e. setting aside contracts exclusively for local persons, where financial resources are exclusively provided by a Tanzanian public body. It is mandatory for PEs under those circumstances to set aside contracts for local firms. The **GN. 446-R.39** provides the limits of exclusive preference shown in **Box 1.2**.

Box 1.2: Exclusive Preference to Local Firms

Procurement type	Value (Tshs)
Works	10,000,000,000
Goods	2,000,000,000
Non-Consultant Services	2,000,000,000
Consultants -Firms	3,000,000,000
Consultants - Individual	50,000,000

Where the procuring entity does not proceed with the local person or firm set-aside under subsection (1), and procures on unrestricted basis, the procuring entity shall include in the procurement file the reason or reasons for the unrestricted procurement.

Important provisions under exclusive preference include:

- Where procuring entity receives only one acceptable offer from a responsible local person or firm in response to procurement set-aside, the procuring entity may consider to make an award to that person or firm;
- Where the procuring entity receives no acceptable offers from responsible local persons or firms, the set-aside procurement shall be withdrawn and if the requirements are still valid, new offers shall be resolicited on unrestricted basis.

In addition to provided exclusive preference, the Minister of Finance, on advice of PPRA, may grant special considerations for procurement of goods, services or works for the purpose of promoting the growth of local companies or public owned local companies in which the Government has shares.

Also regional preference based on the

Box 1.3: Regional Preference to local firms

Procurement type	Value (Tshs)
Works	1,000,000,000
Consultancy Services	200,000,000
Goods	200,000,000
Non-Consultant Services	200,000,000
Consultancy Services	200,000,000

locality of the firms has been recognized in which case PEs, particularly those in the local governments, is allowed through **GN. 446-R.40** to reserve contracts up to a certain value to firms located in their locality. This move will encourage establishment of businesses outside major cities and towns of the country.

1.7.5 Splitting of Contracts

PPA 2011-S.49 as a matter of principle requires procuring entities to aggregate their procurement requirements to obtain a large tender which would allow them obtain value of money through economy of scales and reduced procurement costs. PPA 2011-S.49 (1) (c) particularly prohibits splitting to defeat the use of appropriate procurement methods. For example, GN. No. 446 allows the use of Request for Quotation obtained from at least three (3) suppliers, contractors or service providers for procurement whose value does not exceed Tsh. 120 million in the case of goods, Tsh. 200 million in the case of works and Tsh. 100 million in the case of non-consultancy services. With this provision, the PEs could decide to avoid using other methods of open tendering by splitting its requirements to small lots of value not exceeding the given thresholds in order to justify the use of quotations.

However, in order to build capacity of the locals, splitting of contracts to sizes which can be implemented by local firms is allowable under **GN. 446-R.42**. A PE wishing to split a contract for wide participation of local firms should ensure the lots are such that local firms are able to compete and must obtain approval of PPRA.

1.7.6 Timely Payment as a Capacity Building Measure

Failure to pay supplier and service providers on time has been a very serious problem.

Timely payment of contracts under preference scheme has been included as a financial capacity building measure. This will be possible if a PE before signing a contract under a preference scheme is assured of availability of funds. **GN. 446-R.44** puts accountability on PEs to ensure timely payments.

Refer to GN. 446-R.10 (4) and R.44 on PEs Obligations to Effect Payments on Time

1.7.7 Simplified Requirements for Participating in Procurement Proceedings

One of the major obstacles faced by SMES in participating in procurement proceedings is the conditions attached for participation including payment of exorbitant fees to collect tender documents and requirements to submit tender securities.

Refer to PPA 2011-S.69 (5) and GN.446-R 183 (3) as a Guide on How to Set Tender Fees

PPA 2011-S.69 (5) and **GN. 446-R.183 (3)** has put a limitation on the tender fees to be charged by the PEs for the collection of Tender documents.

The use of tender securing declaration instead of tender securities in all tenders subject to exclusive preference scheme is provided for in **GN.446-R 41**. It

Internal Auditors, as part of their audit work, should ensure all preference scheme is applied by PEs and should in addition should strongly focus on fees charged for collection of tender documents and timely payment of SMEs

is important to remind bidders that failure to comply with the terms of the tender securing declaration shall lead to debarment for a period not less than six months and not exceeding two years –**PPA 2011-S.62** and **GN.446-R 93(2) (b)**.

1.7.8 Monitoring of Preference Scheme

GN.446-R 45 puts accountability on PPRA to ensure that PEs implement the preference scheme by maintaining a database of all contract awards under preference scheme and publish it in the TPJ and Tender Portal-.

2. MONITORING OF PROCUREMENT

2.1. Mandate of PEs in Complying with Procurement Act

All PEs as defined in the Public Procurement Act are required to comply with the law. PPA 2011-S.48 (1) puts the responsibility to the Accounting Officer to ensure that all procurement of goods, works or services shall be done in accordance with the procedures prescribed under the Act or Regulations.

It is therefore the responsibility of the Accounting Officer and any person involved with procurement activities of the organisation to ensure compliance with the Act and the Regulations, failure of which he shall be held accountable- Section of PPA 2011-S.48(4) and (5).

2.2. Mandate of PPRA in Ensuring Compliance with Law:

Amongst the objectives establishing the PPRA are to ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement standards and practices, and to monitor compliance of procuring entities to the PPA 2011 and its regulations.

The specific functions of the PPRA directly related to monitoring of procurement are contained in PPA 2011-S.9 and include:-

- a) To monitor and report on the performance of the public procurement systems in the United Republic of Tanzania and advise on the desirable changes,
- b) To conduct periodic inspections of records and proceedings of the procuring entities to ensure full and correct application of the PPA 2011;
- c) To monitor the award and implementation of public contracts with a view to ensuring that:
 - i) such contracts are awarded impartially and on merit,
 - ii) the circumstances in which each contract is awarded or as the case may be, terminated, do not involve impropriety or irregularity and
 - iii) The implementation of each such contract conforms to the terms thereof.
- d) To institute:
 - i) Procurement audits during the tender preparatory process,
 - ii) Contracts audits in the course of execution of an awarded tender, and
 - iii) Performance audits after the completion of the contract in respect of any procurement as the case may be.

Further GN. No. 446-R. 88 amplifies the role of PPRA with regard to procurement, contract and performance audit.

The purpose of this chapter is to assist a PE prepare for the audits that are conducted by PPRA.

2.3. Objectives of PPRA's Procurement Audits

The primary objective of the procurement audits is to: provide PPRA with independent information, assurance and opinion about economy, efficiency and effectiveness in the use of public funds; ensure that all eligible suppliers, contractors and service providers are given equal opportunity to compete in providing goods, executing works or providing services, and; ensure that there is integrity, accountability, fairness and transparency in the procurement process. The secondary objective is to identify weaknesses in complying with the provisions of the PPA and its Regulations so as to enable appropriate measures to be taken including implementation of appropriate capacity building strategies.

2.4. The Procurement Audit Process

2.4.1 The Process

The approach to be followed by PPRA in carrying out procurement audit is prescribed in GN. 446-R. 88. It encompasses the following:

- Before embarking on the audit, PPRA shall notify the PE on the intention, objectives and compliance indicators to be used for the audit;
- The PE shall make available all the documents requested for the audit in the timely manner;
- There would be two meetings (1) kick off meeting and (2) wrap up meeting with the Management Team to brief them about the audit;
- On completion of the audit, and before issuing the final report, PPRA shall submit to the PE the audit findings;
- The PE shall respond to PPRA's audit findings within 14 days of receiving the audit report; and
- Finally the audit report shall be submitted to the relevant committee of the Board of PPRA which shall approve the audit report, and its recommendations thereof shall be forwarded to the PE.

To facilitate the audit process a PE is required to make available a dedicated office space to be used by the auditors and for keeping documents during the audit and one staff should be dedicated to work with the auditors to make sure that all documents that are requested by the auditors are provided/produced in time.

2.4.2 PEs Preparation for the Procurement Audit

A PE is required to make available information to PPRA to facilitate the audit process. Experience shows that many PEs start compiling the information required for the audit when they receive notification from PPRA. It is a good practice for a PE to have the procurement audit in mind when carrying out procurement, and therefore should continuously keep up to date all the necessary information required for the audit, which include the following:

1. A list of all actual procurement (classified into goods, works, consultancy services and non-consultancy services) and their respective values.
2. Procurement plan.
3. All tender files.
4. PE detailed budget.
5. All tender evaluation reports.
6. Minutes of all tender related meetings e.g. tender opening, etc.
7. Audit reports (external, internal, special reviews, investigations, etc).
8. Contract documents.
9. Tender notices and adverts.
10. Delivery certificates/notes/final payment certificate.
11. Inspection reports.
12. Notifications of tender awards.
13. Bidders register.
14. Status of the awarded contracts.
15. Minutes of all tender negotiations.
16. PE Organization Chart.
17. List of rejected/cancelled tenders.
18. Minutes of tender board meetings
19. Stock verification report.
20. Complaints log.
21. General procurement correspondence files.
22. Summary of payments made, classified by vendor and tender.
23. Bid securities, performance securities, warranties etc.
24. Minutes of site meetings, site supervision reports, progress reports etc

2.4.3 Compliance and Performance Indicators

In order to measure compliance with the Law, PPRA uses Compliance and Performance Indicators (CPIs) which were adopted from the System of Checking and Mapping Procurement. These are shown in **Annex 1**.

The CPIs address key areas which both Internal and External Auditors are required to ensure PEs compliance with the same. These include

1. **Institutional Setup and Performance** – which is aimed to check to what extent the PEs has established structures mandated under PPA 2011 to handle and ensure the efficiency of the procurement process. The requirements of the law with regard to this CPI are covered in **Section 3** of these notes.
2. **Appropriate Preparation and Implementation of Annual procurement Plan**- which is aimed to establish the extent to which a PE has prepared and is implementing the procurement plan in accordance with the requirements of PPA 2011 and PPR 2013. The requirements of the law with regard to this CPI are covered in **Section 4** of these notes.
3. **Appropriateness of the Tender Process** – which is aimed to establish the extent to which a PE adheres to the procurement process stipulated under PPA 2011 and PPR 2013. The requirements of the law with regard to this CPI are covered in **Section 5**

for goods, works and non-consultancy services; and **Section 6** for Consultancy services.

4. **Appropriateness of Contract Implementation** – which is aimed to establish the extent to which records properly kept for the PE in accordance with the requirements of the law. The requirements of the law with regard to this CPI are covered in **Section 7** of these notes.
5. **Implementation of Systems Prepared by PPRA** – which is aimed at establishing the extent to which a PE is using various systems prepared by PPRA for keeping and sharing Procurement information
6. **Handling of Procurement Complaints** –which is aimed at establishing the extent to which complaints by bidders submitted to the PE are handled. The requirements of the law with regard to this CPI are covered in **Section 1** of these notes

2.5. Value for Money Auditing

2.5.1 The Mandate

Section 9(i) (ii) & (iii) of the Public Procurement Act No.7 of 2011 gives PPRA mandate to institute contract and performance audits during and/or after the implementation of contract in respect of any procurement as may be required.

Value for Money audits are carried out to determine the following:

- Whether the contracts are/were implemented in accordance with stipulated terms and conditions of the contract; and
- Whether value for money is/was achieved in spending public funds on the selected procurement contracts.

2.5.2 Value for Money Audit Tool

Just like the compliance audit PPRA have prepared Value for Money Audit tool for building projects, road construction projects, consultancy projects for works, goods and IT systems and projects. To explain the tool, we shall use the VfM Auditing tool for building works which is attached as **Annex.2**. In value for money audits, a different tool is used which is based on five performance areas (weighted as shown in brackets) as shown below:

Audit Area	Score
Planning, design and tender documentation stage	20%
Procurement Stage	10%
Construction stage	20%
Project completion and closure stage	10%
Quality and Quantity of Executed Works	40%

In the course of executing the audit assignment, various approaches are used including; documents review, interviewing various stakeholders, and in some selected cases assessment of the procured goods and constructed facilities are done. The following documents are normally critically reviewed: Annual Procurement Plans; Correspondences in

the tender files; Tender adverts; Bidding documents; tender evaluation reports; Minutes of tender board meetings; Notification of contract awards; Contract documents; Internal Audit reports; and Documents on contract administration. In the case of value for money audits for construction projects, physical works are thoroughly inspected and measured to ascertain the quality and quantity of the work done.

2.5.3 Value for Money Audit Opinion

On the basis of developed VfM assessment criteria, the Authority aggregated into three groups the scores attained by each assessed project and each project was rated either with satisfactory, fair or unsatisfactory performance. The aggregates are indicated in **Table 2.1**

Table 2.1: Categories of VfM Audit opinion

Aggregated score	Value for Money opinion	Remarks
75% - 100%	Satisfactory	i) There is sufficient assurance that project objectives are likely to be achieved (or have been achieved) and VfM is likely to be realized (or has been realized). ii) Although the project is/ was exposed to some risks, they are considered to be manageable (they could have been managed). iii) Risk management action is/ was effective although improvement is/ was possible. iv) Management action is/was required to address the weaknesses observed.
50% - 74%	Fair/ Satisfactory with some significant reservations	i) Although most of the project objectives are likely to be achieved but there are significant weaknesses that need to be addresses for the project to realize value for money (or important improvement could have been made to enhance VfM). ii) Risk management plan is/ was not sufficiently effective. iii) Management action is/was required to address the significant number of weaknesses observed.
0% - 49%	Unsatisfactory	i) Most of the project objectives are unlikely to be achieved (or have not been achieved) hence VfM is unlikely to be achieved (or has not been realized). ii) Key risks were / are not being managed effectively or were/ are not being managed at all. iii) Urgent and significant management action is /was required to address the observed weaknesses to minimize the effects.

2.6. Corruption Red flags

In order to collect information about possible symptoms of corruption in the procurements carried out by procuring entities, PPRA uses a red flags checklist shown in **Annex 3**

specifically developed for the purpose. Red flags checklist also serves as a tool to address corruption at the level of the individual procuring entity. In this regard, it is important to note that a detected red flag is not in itself evidence of corruption; however, the higher the number of red flags detected, the higher the likelihood that corruption has been involved. In some cases, the higher the number of red flags detected indicates that the weaknesses observed are not a result of existence of corruption in the procurement but rather operational deficiencies due to capacity gaps.

Internal Auditors can also use the established redflag checklist to establish how well the organisation is faring and to enable the management take early corrective actions particularly where it is established that detected redflags are not as a result of corruption but rather operational deficiencies due to capacity gaps.

2.7. Internal Monitoring of Procurement by the PE

2.7.1 Legal Mandate for Internal Auditing

PPR 2011-S.48 (1) requires the Executive Director of an LGA to ensure that procurement of goods, works or services is carried out in accordance with the Act or Regulations. To ensure that this is achieved PPA 2011-S48 (2) requires the Internal Auditor to include in his quarterly audit report to state whether there is compliance. The same Section requires that the copy of the quarterly report be submitted to PPRA.

Further GN.446-R.86 requires the Head of Internal Audit to submit the quarterly Internal Audit Report to PPRA within 14 days after the same has been submitted to the Accounting Officer. If PPRA finds any violation with PPA 2011 and its Regulation, it shall require the Accounting Officer to submit more details of procurement whose violation has been observed.

Given this responsibility of complying with the Act, it is therefore the duty of a PE through its Internal Audit Unit to ensure that the organisation complies with the procurement act and its regulations. The Head of PE needs to put into place an Internal Control System to ensure that procurement law is complied with.

To facilitate auditing by the Internal Audit Department PPRA has prepared Guidelines for Procurement Auditing by Internal Auditors attached as **Annex 4**.

2.7.2 Risk Based Auditing of Procurement

Over the last few years, the need to manage risks has become recognised as an essential part of good corporate governance practice. This has put organisations under increasing pressure to identify all the business risks they face and to explain how they manage them.

The same applies to procurement there is a need to manage all potential risks that are related to the procurement in all stages of the procurement cycle.

Risk based internal auditing (RBIA) is a methodology that links internal auditing to an organisation's overall risk management framework. RBIA allows internal audit to provide assurance to the Organisation that risk management processes are managing risks effectively, in relation to the risk appetite.

According to the Institute of Internal Auditors, Risk is defined as a possibility of an event occurring that will have an impact on the achievement of set objectives. It is measured in terms of impact and likelihood.

Performance Standard 2010 of the IIA requires the *“Chief Audit Executive to establish risk-based audit plans to determine the priorities of the internal audit activity, consistent with the organization’s goals”*. This professional requirement is also consistent with stipulations on Section 2 of the Local Authority Financial Memorandum (2009): *“the internal auditor shall prepare the Annual Risk Based Internal Audit Plan and submit to the Audit Committee and Accounting Officer for approval.”*

Apart from Risk-based approach to audit plan being a professional and legal requirements, it has the following advantages:

- It helps focus audit efforts on areas that matter most (i.e. risky areas of the LGA) hence economic use of audit resources;
- Improves ability to impact and improve the LGA by targeting the areas that erode value; and
- Creates credibility from management

By following RBIA internal audit should be able to conclude that:

1. Management has identified, assessed and responded to risks above and below the risk appetite
2. The responses to risks are effective but not excessive in managing inherent risks within the risk appetite
3. Where residual risks are not in line with the risk appetite, action is being taken to remedy that
4. Risk management processes, including the effectiveness of responses and the completion of actions, are being monitored by management to ensure they continue to operate effectively
5. Risks, responses and actions are being properly classified and reported.

This enables internal audit to provide the Organisation with assurance that it needs on three areas:

1. Risk management processes, both their design and how well they are working
2. Management of those risks classified as 'key', including the effectiveness of the controls and other responses to them
3. Complete, accurate and appropriate reporting and classification of risks

RBIA starts with the identification of risks. For example a risk assessment conducted by Internal Audit of one organization¹ during the planning phase of the audit to help ensure the audit focused on areas of most significance. The following risks were identified:

¹ Downloaded from <https://www.bac-lac.gc.ca/eng/about-us/audits-evaluations/Documents/audit-procurement-practices-2014.pdf>

- Risk that procurement activities are not conducted in compliance with central agency policies and legislation;
- Risk that procurement activities are not completed in a timely manner to support the achievement of LAC objectives;
- Risk that oversight mechanisms are not effective in identifying, analyzing, and monitoring procurement activities across the institution;
- Risk that resources related to procurement are insufficient to ensure timely, accurate and complete services to clients, reducing the Contracting and Materiel Management Division's ability to meet its objectives and its clients' needs; and
- Risk that the contracting process is not transparent and/or equitable, leading to a damaged reputation and negative publicity.

A list of potential risks in procurement which may need to be considered by the Internal Audit Unit are shown in **Annex 5**.

2.8. Monitoring of Procurement by the Controller and Auditor General

Further to the requirement of the Internal Auditor to ensure PEs compliance with PPA 2011-S.48(1), the CAG is also, in accordance with PPA 2011-S48(3) to ensure compliance with the Act through his Annual Statutory Audits.

Other implied roles of the CAG office to monitor procurement in country include:

- Requirement of PPRA to submit copy of its Annual Performance Report, which contains procurement audit findings of the PEs, to the CAG in accordance with PPA 2011-S.29(1)(b).
- PPA 2011-S.61 (1) requires procuring entities to maintain a record of its procurement proceedings in which it is involved, including decisions taken and the reasons for it and such record to be kept for a period of not less than five years from the date of completion of the contract and be made available when required to the Minister and the Controller and Auditor-General. This provision has been reinforced by GN.446-R.15 (6).

The requirement placed for PEs to report on any emergency procurements (GN.446-R.64 (1) and GN.330-R.32 (1)); to submit signed contracts and letter of award (GN.446-R.109 and R.232 (1) to CAG among other oversight bodies, is also a procurement monitoring role by CAG.

To avoid possibilities of duplicating efforts, PPRA and the National Audit Office (NAOT) signed a Memorandum of Understanding with the objective of collaborating in the following areas;

- Conducting procurement audits, special investigations in public procurement, performance and forensic audits in relation to public procurement by exchanging and sharing technical expertise and information whenever it is necessary, and Co-operating in building the capacity of staff of the two institutions on the following areas: training on the basic techniques for carrying out forensic and value for money audits in relation to public procurement;
- Training on the application of PPA and its Regulations; sharing of guidelines for

procurement audits, forensic audits and value for money audits in relation to public procurement.

Through the signed MOU it has been possible for PPRA to share with NAOT its procurement audit reports and for the CAG to include the findings of those reports in his Annual Audit Report.

2.9. Investigation of Procurement activities

2.9.1 Investigations by PPRA

PPRA as a Regulator of procurement is mandated to carry out investigation on any aspect of procurement.

Refer to PPA 2011-S.10 to 20 and GN. 446-R.89.

GN. 446-R.89 allows PPRA to conduct procurement investigation on its own initiative or through the request of budget approving authorities. PPRA's request for information to assist in such an investigation shall be made to any member of the PE or any other person it considers that can assist in that matter and the information must be provided within seven days from the day it is requested. Note that failure to provide information is an offence under **PPA 2011-S.104 (2) (a)**.

The need establish mechanism for PPRA to cooperate with other law enforcement organs with regard to the outcome of its audits and investigation, and in enforcement of the findings is emphasized in **GN.446-R.91**. The contemplated law enforcement organs include the Controller and Auditor General, the PCCB, the Director of Prosecution, Professional Bodies etc.

After investigation PPRA is required to submit a written report of its findings and recommendation of the actions to be taken by the competent authorities. Actions that may be recommended according to **GN. 446-R.91 (2)** are shown in **Box 3.1** and they are in accordance with PPA 2011-S.16, 19 & S20. Following the submission of such reports together with the recommendations, the competent authorities are required to respond within 14 days from the date of receipt of recommendations indicating the actions taken, and in addition they are required to submit a report of the status of implementation of the recommendation within three months from the date of receiving the recommendations.

Box 3.1: Possible Disciplinary Recommendations by PPRA

- (2) The recommendations may include the
- (a) disciplining of the accounting officer, chairman or member of the tender board, the head of procurement management unit, a member of the tender evaluation committee or any other officer concerned with the procurement process;
 - (b) replacement of the head of procurement management unit, the chairman, or any member of the tender board, as the case may be;
 - (c) termination of the procurement proceeding;
 - (d) rectification of the contravention by taking such actions as may be necessary to rectify the same;
 - (e) suspension of the officer concerned to participate in procurement related activities for a specified period.

2.9.2 Investigations by Regional Commissioner

In addition to the investigation that may be conducted by PPRA, GN 330-R.33 to 39 provides for conduct of investigations by the Regional Commissioner of any aspect of procurement of a Council. Issues to note include the following:

Refer to GN. 330-R.33 to 39

- The investigations shall be carried out in consultation with PPRA;
- Investigations may be undertaken by RC on his own initiative or as a result of representations made to him;
- RC shall inform the Executive Director the results of the investigations and make such recommendations as he considers necessary;
- Disciplinary actions may be undertaken by the Council or Minister against an officer or Director found to flout the procurement procedures.

Internal Auditors, as part of their audit work, should ensure that

1. They understand the Checklist of Procurement Audit by Internal Auditors Prepared by PPRA
2. They understand the Compliance and Performance indicators used by PPRA to monitor compliance of PEs with the Procurement Law.
3. They understand the VFM Audit Tool used by PPRA to conduct VfM Audits;
4. They understand the potential risks in procurement which will assist them in planning their Risk Based auditing of procurement in LGAs.

3.

3. INTERNAL SETUP OF PUBLIC ENTITIES WITH RESPECT TO PROCUREMENT

3.1. Introduction

Before discussing the internal setup it is important to appreciate who are the PEs in accordance with PPA 2011. A PE is defined as a **public body** and any other body, or unit established and mandated by Government to carry out public functions. The definition of a **public body or public authority** refers to:

- i. Any Ministry, Department or Agency of the Government;
- ii. Any body corporate or statutory body or authority established by the Government;
- iii. Any company registered under the companies Act being a company in which the government or an agency of the government, is in the position to influence the policy of the company; or
- iv. Any local government authority.

It is particularly important here to emphasize on public bodies falling under (iii) above. An LGA, just like some Parastatals, may decide to establish commercial units under Companies Act to carry out certain of its mandates. Companies formed in which the LGAs holds majority shareholding will be regarded a public body and therefore obligated to comply with the PPA 2011 and its Regulations.

3.2. Internal Set Up of Procuring Entities

3.2.1 General

The PPA 2011 provides the procedures on how procurement functions should be handled using the organs established within the PEs that are Accounting Officer (AO), Tender Board (TB), Procurement Management Unit (PMU), Evaluation Committee (EC), User Departments (UD) and Inspection and Acceptance Committee (IAC).

The AO has the responsibility of overseeing that procurement activities in his/her institution are done according to procedures in PPA 2011 and Its Regulations. PPA 2011-S.36 describes the duties and responsibilities of the AO as shall be discussed in detail below. It gives the AO powers to establish the TB and PMU whose functions are discussed in detail in the coming sections.

Together with the AO, the PPA 2011 defines the responsibilities of key players in the procurement process for each and every PE implementing the Act.

Setup of LGAs PEs

FINANCE COMMITTEE

Overall responsibility for the execution of the procurement process in his/her organisation

ACCOUNTING OFFICER

Overall responsibility for the execution of the procurement process in his/her organisation

TENDER BOARD

Overall in charge of approval various stages of procurement until contract award and variations

PROCUREMENT MANAGEMENT UNIT

Overall in charge managing procurement activities in a PE on behalf of User Departments

EVALUATION COMMITTEE

Responsible for carrying out evaluation of tenders

INSPECTION AND ACCEPTANCE COMMITTEE

Responsible for inspecting good, works and services delivered for acceptance by PE to ensure that they meet the specified quality requirements.

3.2.2 The Finance Committee

In addition to the function of the budget approving authority given in PPA 2011-S33 (2) & (3), they are required under **GN. 330-R.17** to approve the names of the members of the TB and overseeing contract implementation through inspection of project works and goods received.

Refer to PPA 2011-S.33(2) & (3) and PPA 2011-S36 and GN. 330-R.17.

The function of overseeing contract implementation through inspection of project works and goods received need to be taken with caution to avoid unnecessary overlaps that may occur with the work of works supervisor of goods inspection and receiving committee. The day to day job of supervising the implementation of works and/or inspecting and receiving goods, and approving payments is vested with executive. The role of the Finance Committee is basically oversight to ensure that the expected procurement outcomes have been achieved

3.2.3 The Accounting Officer

According to PPA 2011-S.3, Accounting Officer means "a government officer appointed in accordance with the provisions of the Public Finance Act or a public officer statutorily appointed to hold a vote or subvention and accounts for all monies expended from that vote or subvention".

Within the context of LGAs, the AO means the Council Executive Director appointed under the provisions of Section 33 of the Local Government Finances Act of 1982.

In every PE, **PPA 2011-S.48 (1)** tasks the AO to ensure that the execution of the procurement process within the organisation is smooth and within the requirements of the law and regulations, failure of which s/he shall be accountable [**PPA 2011-S.48 (4)**].

Refer to PPA 2011-S.48(1), (4) & (5) and PPA 2011-S.36 and GN. 330-R.22.

In addition to that responsibility of ensuring compliance with the procurement law, **PPA 2011-S.36** sets out the functions and powers of the AO. In particular, the AO has been empowered before communicating the award decision, where necessary, to obtain a briefing of the recommendation of award of a particular tender from the chairman, any member of tender board or evaluation team or procurement management unit. Where the accounting officer is not satisfied with the decision of the tender board he shall return the decision to the tender board for review giving written reasons for dissatisfaction and where not satisfied with the outcome of the review he shall refer the matter to PPRA for advice – **PPA 2011-S.36(3) & (4)**.

PPA 2011 requires the AO of LGA to seek approval of the Finance Committee prior to awarding any contract which exceeds the approved budget, **PPA 2011-S.35 (4)**. This provision is aimed at curbing the current trend where some accounting officers go ahead to award contracts without making sure that they have adequate funds set aside for execution of the contracts thus causing serious payment delays to contractors and suppliers. Note that

the said section requires the Finance Committee to give its approval within fourteen days, and if they fail to do so the request shall be deemed to be disapproved.

3.2.4 Tender Board

PPA 2011-S.36 (2) & (3) requires every LGA to establish a TB in accordance with the Regulations made pursuant to the provisions of the Local Government Finances Act of 1982. In fact this is the provision of the PPA 2011 which gives birth to GN. No. 330 of 2014.

PPA 2011-S.36 (2) & (3)
and GN. 330-R.7

GN. 330-R.7, requires the establishment of a TB in every Council whose members shall be appointed by the AO in accordance with the provisions of GN. 330-R.7 (2).

It is particularly important to note that:

- Council Legal Officer or his representative is a non-voting member of TB;
- Council Treasurer shall not be appointed a member of TB;
- Names of appointed members of TB shall be submitted by the AO to the Finance Committee for ratification and approval.

Refer to **PPA 2011-S.39**
and GN. 330-R.26

The functions of the TB are given generally in **PPA 2011-S.33** (1) and further elaborated in R GN. 330-R.18.

It is important here to emphasize on the function of approving tendering and contract documents. TB deliberations for the approval of award of contract depends on the provisions of the tendering documents. Similarly, TB approval of variations, addenda or amendments to ongoing contracts depends on the provisions of the contract documents. Therefore if the job of approving the tendering and contract documents is done properly by the TB, there will be no controversy when deciding whom to award contract and/or when approving variations as required by the law.

PPA 2011-S.33 (1) and
GN. 330-R.18

3.2.5 Procurement Management Unit

PPA 2011-S.37 requires PEs to establish PMUs in order to carry out and manage the procurement procedures. In the case of LGAs the requirement of the PPA 2011 to establish PMU is echoed in GN. 330-R.24.

Refer to **PPA 2011-S.37**
and GN. 330-R.24 & R.25

The functions of the Procurement Management Unit are given in **PPA 2011-S.38** and, in the case of LGAs; they are further amplified in GN. 330-R.24. In summary PMUs are mandated to manage all procurement or disposal activities of the PE except adjudication and the award of contracts and to support the functioning of the TB. It is a unit that is responsible for handling all procurement matters on behalf of other departments within the organisation.

The success and efficiency of procurement operations in the PE will depend on its PMU. Therefore a procurement unit is required to be properly staffed and provided with adequate

working tools to enable it manage the procurement process efficiently. The size and level of staffing of the procurement unit is determined by the procurement and disposal workload of the PE taking into account the volume, value, complexity and type of procurement and disposal conducted.

The procurement unit must be staffed with procurement professionals and may include staff with relevant technical skills, where a PE has a significant volume of specialised procurement or procurement requiring significant technical input. **PPA 2011-S.37 (3)** requires that the head of PMU be a procurement professional registered by the Procurement and Supplies Professionals and Technicians Board (PSPTB).

3.2.6 User Department

The user departments are not created by PPA 2011 and its corresponding Regulations but are important structure of the PEs and are the consumers of the procured products and services, and therefore have been assigned specific responsibilities under PPA **2011-S.39** and GN. 330-R.25 in the case of LGAs.

Experience shows that some problems of delays in the procurement processes are as a result of lack of cooperation between user departments and the PMU. Procurement of certain assignments like consultancy services and works contract can not be initiated until the PMU is provided with Terms of Reference and/or specifications from the user department who are the ones well versed with the subject matter of procurement.

Also it should be appreciated that user departments are sub vote holders and are therefore responsible in ensuring that funds are available before commencing procurement proceedings and payments are effected to service providers upon acceptance of the delivered services.

3.2.7 Tender Evaluation Committee

PPA 2011-S.40 and GN. 330-R.27 requires PEs to establish evaluation committees for the purpose of carrying out the technical and financial evaluation of the tenders or proposals.

Refer to **PPA 2011-S.40** and GN. 330-R.27

The members of the evaluation committee are required to be at least three including the chairman and are appointed by the AO upon recommendation by the PMU. In recommending the names of persons to be appointed as members of the evaluation committee, the PMU shall consider the expertise and level of seniority required depending on the nature of procurement.

The referred Section in PPA 2011 and Regulation in GN. No. 330 discusses in detail the membership requirements of evaluation committee and how they should conduct the evaluation exercise. It is important to realise that the quality of the decision reached by a tender committee will depend on how well were the tenders evaluated. Therefore, as a guide, an evaluation committee needs to comprise of members who have the following:

- Knowledge of the overall operations of PE;
- Knowledge of technical aspects of the procurement; and

- Knowledge of the accounting and financial principles to secure accurate financial evaluation.

It is important to note the contradiction of GN.330-R.26 and GN.330-R.27 (3) with regard to the participation of the members of the UD in the evaluation of Tenders. GN.330-R.27 (3) is against the Principal Law, the PPA 2011 in which one of the functions of the UD is to participate in tender evaluation [**PPA 2011-S.39 (e)**]

3.2.8 Negotiation Team

PPA 2011-S.76 puts a requirement for negotiations of contracts prior to the award of contract. Details of appointment of members of the negotiation team are provided in the regulations in particular GN. 446-R226(1)

Refer to **PPA 2011-S.76** and GN. 446-R226

provides that PMU shall recommend membership of the negotiation team based on appropriate seniority and experience depending on the value and complexity of procurement and that the membership shall be approved by the Accounting Officer who shall also name the chairperson from amongst the members.

Important things to note about the negotiation committee:

- Number of members shall depend on the value and complexity of the procurement but shall be limited to a minimum of three and a maximum of five;
- May include members of the evaluation team or different officers;
- It must be multi-disciplinary comprising of individuals with knowledge of end-user requirements; negotiation skills, procurement and contracting skills, financial management skills, or technical skills relevant to the subject of the procurement; and
- Members may be external to the PE where the required skill or experience is not available within the PE or where there is a conflict of interest.

3.2.9 Goods Inspection and Acceptance Committee

According to GN. 446-R245 the Accounting Officer is required for each tender, including call-off orders, appoint a goods Inspection and Acceptance Committee which is required to:

Refer to **GN. 446-R.245**

- Inspect the goods at the office of the Council or, user, or at the site specified in the contract and any inspection at any other site shall be with a prior consent in writing of the Council;
- Inspect and count the goods in order to ascertain whether they are correct and complete in accordance with the agreement.

It is also provided in GN. 446 –R. 246 that in the case of a technical or scientific test or experiment, an expert or qualified person in respect of the goods may be invited for consultation or the goods may be sent to that qualified person for test.

3.3. Delegation of Procurement Authority

Delegation involves assigning responsibility and authority to another person to carry out specific activities while the person delegating such authority and responsibility remains accountable for the outcome of the delegated activities. It involves the shift of decision-making authority from one organizational level to a lower one. Delegation is generally aimed at saving resources (money and time) and helps build skills and motivate subordinates in the process. Cost effectiveness should be the basis for making a decision to either delegate or contract out procurement functions. The reasons for delegation or contracting out could be the work load, type of work or circumstances of the procurement which render it not to be cost effective to undertake the delegated/contracted out function.

Internal Auditors, as part of their audit work, should ensure that

1. Appointment of members of Tender Board, and the functioning of all parties involved in procurement is in accordance with the provision of the law and without any interference of roles and responsibilities
2. Delegation of procurement authority is done in accordance with the law
3. All disagreements that occur are handled in accordance with the law

PPA 2011-S.42 & S.43 allow the AO to delegate procurement authority as amplified in GN. 446-R.46 to R.50. Provisions of GN. No.446 of 2013 for delegation of procurement authority is shown in **Figure 3.1**.

3.4. Handling of Disagreements

Table 3.1 summarises the provisions of GN. NO. 446 of 2013 on how to handle disagreements. These provisions are in accordance with **PPA 2011-S.45**.

Refer to PPA **2011-S.36(4)** and GN.446-R.51 to R.54

It is seen that in two cases, disagreements between the Accounting Officer and the Tender Board and between Tender Board and PMU may end up being referred to PPRA for directives. This was one of the reasons why PPRA was removed from complaints handling procedure to avoid potential conflict of interest that could arise since directives given by PPRA could be the subject of a complaint by a bidder.

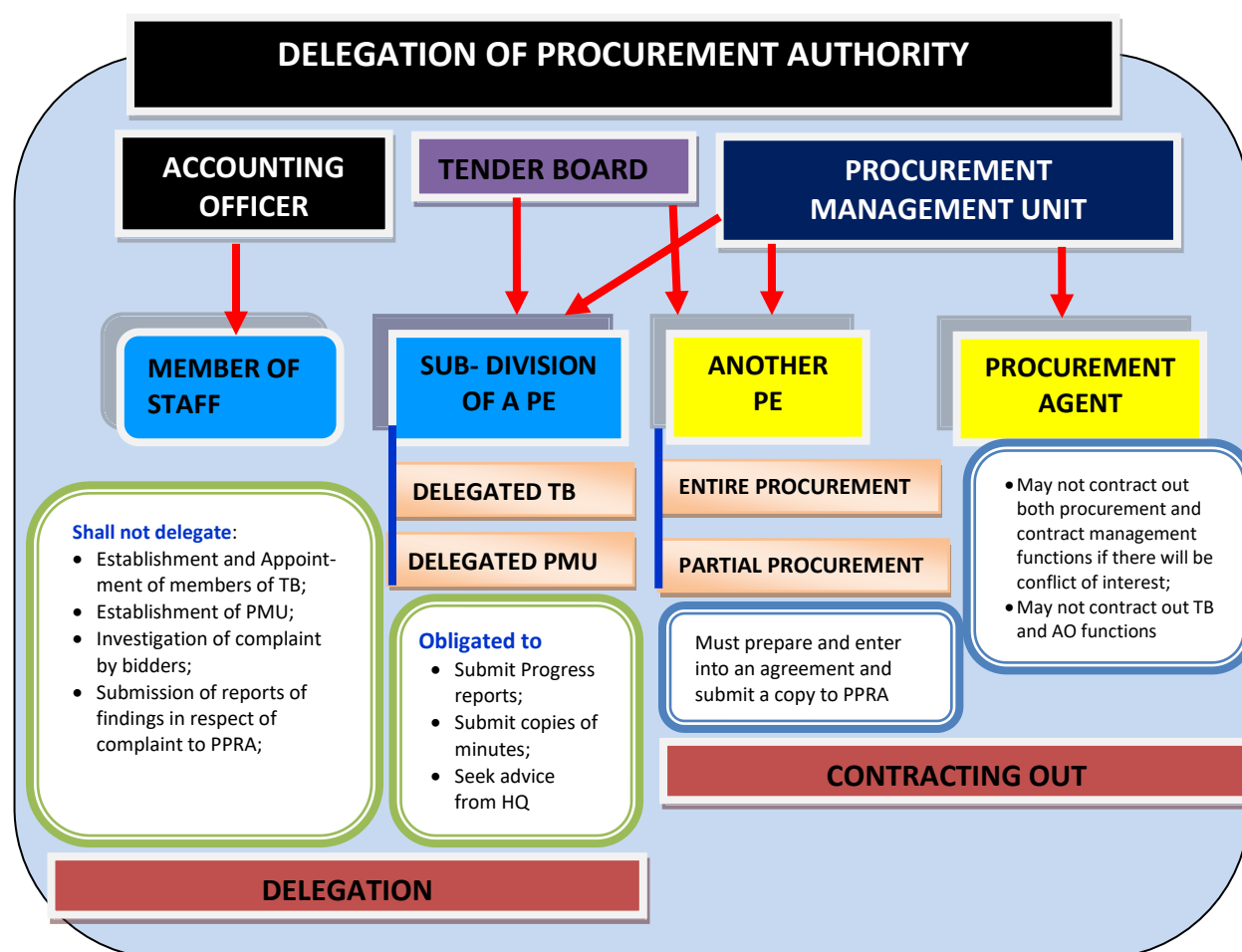


Figure 3.1: Summary of Delegation of Procurement Authority GN. NO. 446 of 2013

Table 3.1: Summary of Disagreements Handling Procedure as Provided in GN. NO. 446 of 2013

Ser. No.	Type of Disagreement	How to Handle the Disagreement	Reference
1.	Accounting Officer and Tender Board	(i) AO to return decision for TB Review giving reasons for disagreement; (ii) Review by TB and issue a decision and re-submit to AO; (iii) AO if not satisfied with decision reached by TB after review, shall refer the matter to PPRA for independent review giving reasons for disagreement	PPA 2011-S.36(4) and GN.446-R.51
2.	Tender Board and PMU	(i) TB to return recommendation to PMU giving reasons for disagreement; (ii) Review by PMU and re-submit to Tender Board; (iii) TB if not satisfied with re-submission, Chairman of TB to refer the matter to Accounting officer for further review. (iv) TB if not satisfied with outcome of review by the AO, shall refer the matter to PPRA for directives.	GN.446-R.52 and R.57(3)
3.	PMU and User Department	(i) PMU and UD shall jointly consult two members of TB for review of the matter; (ii) If further disagreement, the matter shall be submitted to the TB for its formal Decision.	GN.446-R.53
4.	PMU and Evaluation Committee	(i) PMU to return evaluation report to EC for re-evaluation; (ii) If PMU disagrees with re-evaluation, shall refer the matter to the TB for Decision.	GN.446-R.54

3.5. Prohibition and Probity in Procurement

In furthering transparency, accountability, openness and fairness in the procurement process, the PPA 2011 stipulates the need for officials of PEs and bidders involved in the procurement process to uphold probity while executing any stage of procurement.

Refer to PPA 2011-S.83 and S.84, GN 446-R.7 and GN. 330-R.6

Probity and ethics requirement are set in GN. 446-R.7 and emphasized in GN. 330-R.6 which requires:

- PEs officers to be scrupulous and honest in their dealings with tenderers, members of the public and with the procuring entity itself
- PEs to conduct procurement and disposal with complete probity and in a manner that the procuring entity is respected and trusted as a client or customer while maintaining good reputation with tenderers.
- To reject a tender of a tenderer who gives or agrees to give directly or indirectly to any public officer or other public authority, a gratuity in any form, an offer of employment or any other thing of service or value, as an inducement with respect to an act or omission or decision of or procedure followed by the procuring entity in connection with that tender or proposal or any other tender or proposal.
- PEs not to make procurement to a member of staff or a person who has direct influence on the decisions of the procuring entity acting in private capacity, either alone or as a partner in a partnership or as an officer of a company.
- PEs not to include in any tender document any condition or specification such as to favour any tenderer.

Internal Auditors, as part of their audit work, should ensure that Bidders probity and ethics requirements particularly are adhered, and may wish to score sampled procurement using Corruption Red Flags to establish extent of non-compliance which could be a sign of lack of probity and ethics.

Internal Auditors, as part of their audit work, should ensure that the Institutional Setup of the Procuring Entity is accordance with the requirement of the Law. This should be checked against the requirement of CPI 1- Institutional Setup and Performance

4. PRINCIPLES OF PROCUREMENT PLANNING

4.1. Procurement Planning and its relevance to the Procurement Process

Procurement planning means the process by which the efforts of all personnel responsible for procurement are coordinated and integrated through a comprehensive plan for fulfilling the PEs' need in a timely manner and at a reasonable cost.

Procurement planning entails preparing a list of all known goods, works and services needed to achieve the set goals for the PE, evaluating the list and divide it into contract packages. It further aims at obtaining economy of scale and reduces procurement cost, through prescribing the appropriate method for effecting procurement subject to the necessary approval by the relevant authority in the PE.

Procurement planning is essential for the effective and timely solicitation of bids or proposals, award of contract and delivery of the goods and services required.

Procurement planning directly links the procurement function to the budget preparation and execution. Without an adequately prepared procurement plan, the budget execution will be hampered.

Adequate procurement planning and prioritization of needs by each PE is an essential prerequisite to effective procurement for the following reasons:

- Funding for procurement is unlikely to be sufficient to meet all requirements, and scarce financial resources must be channeled to ensure that the priority services of a PE are adequately met before spending on less essential procurements.
- Allows requirements to be aggregated into larger purchases at lower unit costs, rather than frequent sourcing of identical items using request for quotations or low value procurement method.
- Publication of realistic annual procurement plans allows the private sector to respond more effectively to the requirements and specifications of Government, through investment in staff and equipment, manufacture and importing of goods, and financial planning.

4.2. Legal Requirements with Respect to Procurement Planning

Procurement planning by PEs derives its legal mandate from **PPA 2011-S49** and **Part II-Section (f) of GN. 446. GN.446–R.70** mandates a PE to prepare an annual procurement plan as part of the budget process and submit the plan to PPRA within fourteen days after the completion of the budget process.

PPA 2011-S.49(3) requires that an APP be approved by the appropriate budget approving authority and once approved the PE is obliged to implement it and if there is any unplanned procurement it shall get prior approval of the accounting officer – **PPA 2011-S.49(3)**.

Other important provisions of PPA 2011 with regard to procurement planning are as follows:

- The mandate to prepare procurement plan is vested to Procurement Management Unit through **PPA-S38 (e)**. And it is further required to prepare and submit to the management meeting quarterly reports on the implementation of the APP [**PPA 2011-S38 (p)**].
- User Department is required to prepare a schedule of requirements for procurements as part of the budget process and submit the same to PMU for compilation of APP – **PPA 2011-S.39(2)**.
- The Accounting Officer is required to submit an APP of a Procuring Entity to PPRA- **PPA 2011-S.36 (1) (j)**.
- Budget Approving Authority are required to review and approve an APP of a PE based on its budget and action plan – **PPA 2011-S.33(2)** and in addition they are required to review quarterly procurement report on the implementation of APP – **PPA 2011-S.33(2)(b)**

Coordination between the PMU and end user department is very important for the efficiency and effective preparation of an APP. Experience shows that many times PMU fails to prepare a consolidated procurement plan as required by **PPA 2011-S.38(e)** because of the failure to get assistance and co-operation of the user departments as required in **PPA 2011-S39(2)** particularly failure to submit their requirements in a timely manner to the PMU to enable them consolidate and come up with organizational rather than departmental requirements of goods and services.

4.3. Procurement Cycle and Its Relevance in Planning of procurement

Figure 5.1 shows the procurement cycle. It starts with planning of individual procurements and ends with the storage, manage and supply of goods or services. It is particularly important to note that the procurement cycle shown in **Figure 4.1** contains two important aspects which need elaboration here. First, before proceeding with the procurement of goods, one must check availability of the item in the stores. This is important to ensure that a PE does not procure something which it already has in stores thus causing unnecessary expenditure. Items in the stores must be consumed before new item are bought and this particular stage in the procurement cycle enables the PE to ensure that this is achieved. This provision is implied in **GN. 446-R.68 (2)** which states that planning of procurement of re-current items should be based on an adequate stock control system.

Second, before proceeding with procurement a PE must ensure availability of funds. This is important to ensure that funds are available to pay the supplier, contractor or service provider once the goods or services have been delivered in accordance with the terms of contract. This is provided in **GN.446-R.75** which requires PEs to ensure that funds are allocated or committed before commencing on procurement proceedings.

The APP should be formulated at the same time as the annual budget is being prepared. This is because the annual procurement activities of the User Departments depend on the funds that are made available for procurement. However, they can also be formulated / revised during the course of a financial year, whenever need arises.

4.4. Steps to be followed in the development of Procurement Plans

Regardless of the source of financing of the requirements that are being planned to be procured, the principal steps that are to be followed in the development of the plan are the same. Below are the steps that apply to the development of the Procurement Plans.

4.4.1 Requirements Aggregation and packaging

PPA 2011-S.49 (1) (b) requires PEs to aggregate its requirements wherever possible both within the PE and between PEs to obtain value for money and reduce procurement costs. Aggregation refers to combining of items of similar nature so as to obtain a large tender which is likely to attract a wider competition. Allotment refers to segregation of large and complex procurement into smaller lots that are either bundles of similar supplies or lots to permit more competition or to allow the participation of local companies.

Contract packaging should consider the ability of local suppliers of goods, works and services to meet the PEs' requirements and/or at the same time the likely hood that foreign bidders will be interested in participating. Contract packaging will have a big influence in the choice of a procurement method to be used.

Factors to consider during aggregation of requirements include:

- a) The market structure for the items required.
- b) Items which are of a similar nature and which are likely to attract the same potential bidders.
- c) The optimum size and type of contract to attract the greatest and most responsive competition or the competitive prices.

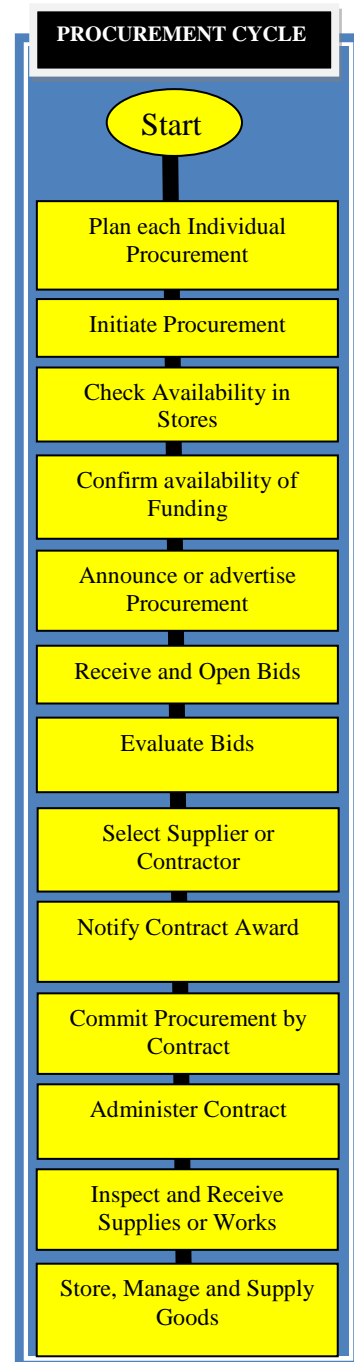


Figure 4.1: Procurement Cycle

- d) Items which will be ready for bidding at the same time.
- e) Items which will be subject to the same conditions of contract
- f) Potential savings in time or transaction costs.

There are four key issues emphasized with regarding to aggregation and packaging of procurement:

- a) Splitting of tender into lots should not be used to avoid competitive procurement method which is otherwise known as slicing in other procurement jurisdiction and is prohibited **PPA 2011-S.49(1)(c)** unless if such splitting is for the purpose of capacity building of local firms as provided in the referred section and in **GN.446-R.42**.
- b) Where possible no single tenderer should be awarded more than one lot in a situation where a procurement requirement is divided into lots of equal packages with the purpose of ensuring greater competition and/or participation of SMEs;
- c) The value of the lots and not necessarily the value of all lots under a procurement may be used to determine the procurement method.
- d) Allow bidders to bid for a single lot, any combination of lots or all lots for a procurement requirement divided into lots but which could be procured as a single contract.

The concept of grouping and packaging of procurement is very important in determining the relevant procurement method which a PE may use. **Figure 4.2** shows groupings that influence selection of a procurement method relative to expenditure and difficulty in procurement. For example low cost items which are easy to procure justify the use of micro, minor value procurement method or request for quotations as shown in **Figure 4.2**.

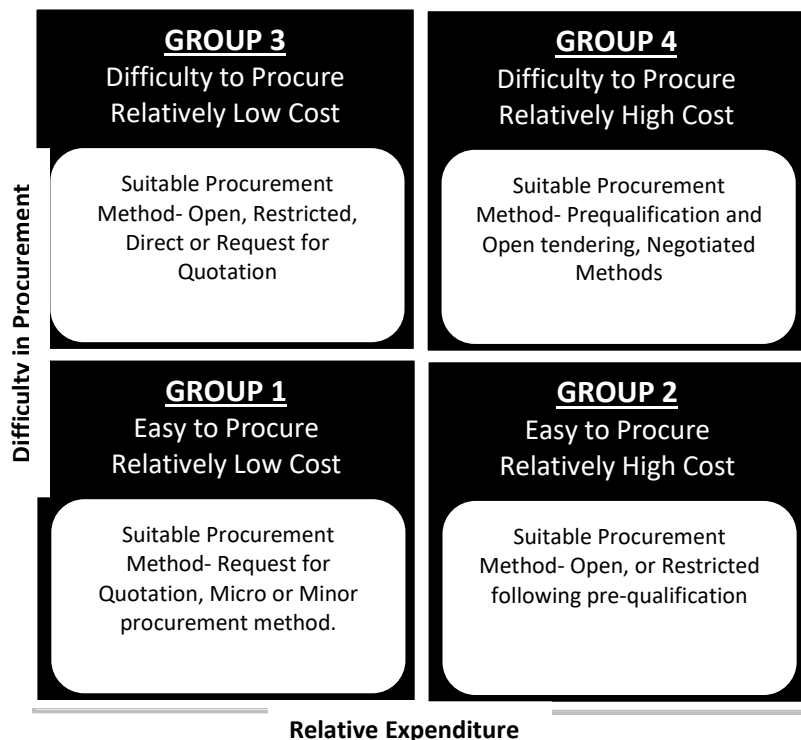


Figure 4.2: Grouping of Procurement

4.4.2 Determination of Procurement and Selection Methods

Contract packaging and choice of procurement or selection methods are very much interlinked. At the same time, it should be noted that the procurement or selection method chosen will have a timeframe as expressed the **Box 4.1**. In the final analysis, the package, method and timing of the different procurement or selection steps in the process are closely interdependent.

The development of the Procurement Plan, therefore, requires the planner to balance the three aspects mentioned above (package, method and timing). One cannot develop contract packages without having in mind how the package will affect the choice of an appropriate procurement method and the time taken to fulfil the requirement consistent with the requirements of the **GN. 446**.

PPA 2011 and **GN. 446** stipulate various procurement methods which are summarized in **Annex 6**. The time required to be given to bidders for the various methods are also given in **Box 4.1**. It is important for PEs to appreciate the time consideration of each method and its impact on the procurement plan.

4.4.3 Procurement Scheduling

One of the considerations in choosing contract packaging is the timing when goods or services are needed. After preliminary packaging plans have been formulated and the method of procurement to be used for each has been determined by the nature and size of the packages, it is necessary to verify that these combinations will permit the goods or services to be delivered at the times they are needed by the PE. The best way to check this is to work backwards from the desired date of delivery to determine whether sufficient time is available to carry out the necessary procurement steps for each element to enable the goods or serviced to be obtained in a timely manner.

Box 4.1: Minimum Tender Processing Times for Goods, Works and Non-Consultancy Services

S/.N o.	Method of procurement	Period (calendar days)
PREQUALIFICATIONSTAGE		
1	International competitive tendering	30
2	National competitive tendering	21
TENDERINGSTAGE		
3.	National competitive tendering	21
4.	International competitive tendering	30
5.	Restricted national competitive tendering	21
6.	National shopping	4
7.	International shopping	8
8.	Where large works are involved	90

Minimum Tender Processing Times for Consultancy Services

S/N	Activity	Time (Calendar days)	
		National Competitive Selection	International Competitive Selection
1	(i) Inviting for expression of interest up to submission of the same by consultants; or	14	30
	(ii) Invitation of Application for Prequalification up to the submission of the same by Consultants	30	45
2	Preparation and submission of proposals by the consultants	30	45

Sometimes it may be found that using the proposed procurement method and adherence to its minimum time requirements for invitation of tenders as required by PPA 2011 and its Regulation will result into delayed delivery of goods or services. Under such circumstances it may be necessary to modify certain contract packages and procurement methods and shorten the time needed until delivery in order to meet the desired date of delivery of goods or services, provided that the modified approach is consistent with the requirements of the law.

4.5. Presenting the Plan

4.5.1 Presentation Format

Procurement plan is normally presented in a Tabular form based on prepared templates by PPRA. The prepared templates for preparing APPs which must be used by all PEs. The templates are in two formats in accordance with the Procurement Regulations:

- APP Template for Procurement of Goods, Works and Non-Consultancy Services
- APP Template for Procurement of Consultancy Services

Under the two proposed formats three templates have been prepared depending on the kind of information which must be kept.

- APP for internal use in the PEs for Planning Purposes;
- APP for External Use- notifying potential bidders of procurement opportunities in the PEs
- APP for submission to PPRA- for notification and monitoring purposes.

PPRA has prepared guidelines to be used to prepare the APPs and can be obtained in soft copy from the PPRA's website (www.ppra.go.tz)

4.5.2 Details of APP for Goods, Works and Non-Consultancy Services

The APP for Internal Use is normally very detailed to provide the PE with key dates for carrying out important actions related with a particular procurement. They contain.

- detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Procurement Method;
- Date for posting out GPN
- In case of Prequalification: Dates for preparation of pre-qualification Document and its approval thereof; Date of inviting potential bidders for the Pre-qualification and the submission of application for Pre-qualification; Date of submission of Evaluation Report and its approval thereof; and Date of notifying bidders of the shortlist.
- Date when the Bidding Documents should be ready and their approval thereof;
- Date of inviting bids and submission thereof;
- Date when the evaluation report should be ready and its approval thereof;
- Expected date of contract award and contract signature

APP for External Use- is used to notify bidders of the procurement opportunities in the PE in the form of General Procurement Notice. It normally contains the following:

- detail of the subject matter of each procurement including tender lots;
- Appropriate Procurement Method
- Estimated date of the approach to the market or the timeframe within which it will occur and expected date of contract – for both pre-qualification and the actual tender.

APP for submission to PPRA, this is aimed at assisting PPRA know all procurements planned in a given financial year and therefore enable it plan its monitoring activities. It normally consists of the following:

- detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Procurement Method;
- Date of posting GPN
- In case of Prequalification: Date of inviting potential bidders for the Pre-qualification and the submission of application for Pre-qualification; and Date of notifying bidders of the shortlist.
- Date of inviting bids and submission thereof;
- Expected date of contract award and contract signature

4.5.3 Details of APP for Consultancy Services

APP for Internal Use shall contain the following information

- detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Contract type and Procurement Method;
- Date for posting out GPN
- In case of Expression of Interest (EOI): Date of advertising invitation for EOI; Date of Submission of application for EOI; Date of submission of Evaluation Report; Date of Approval of Shortlist by TB; and Date of notifying consultants of the shortlist.
- Date when the RFP Documents should be ready and their approval thereof;
- Date of inviting Proposal and submission thereof;
- Date when the technical evaluation report should be ready and its approval thereof;
- Date of opening financial proposal
- Date when combined technical and financial evaluation report should be ready and its approval thereof
- Expected date of contract award and contract signature

APP for External Use to the Consultants in the form of GPN shall contain the following information:

- detail of the subject matter of each procurement including tender lots;
- Appropriate Contract Type and Procurement Method
- Estimated date of the approach to the market or the timeframe within which it will occur and expected date of contract – for both EOI and Invitation of RFP.

APP for submission to PPRA shall contain the following information;

- detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Contract type and Procurement Method;
- Date for posting out GPN
- In case of Expression of Interest (EOI): Date of advertising invitation for EOI; Date of Submission of application for EOI; and Date of notifying consultants of the shortlist.
- Date of inviting Proposal and submission thereof;
- Expected date of contract award and contract signature

4.6. Monitoring and Updating of the Procurement Plan

One aspect that need to be emphasized is the non-static nature of a procurement plan and the need to revise and update the plan following the approval of the budget to take into account of the actual approved amounts and during the actual implementation of the plan to take into account of any delays that may have been encountered during the process.

The necessity of review of APP may arise because of:

- Shortage of funds;
- Late release of funds;
- Unexpected availability of supplementary funds;
- Delays in obtaining necessary approvals from senior management; and
- Failure of contractors to supply as contracted, necessitating re-bidding.

Therefore in the course of executing the APP for a particular fiscal year, the original procurement plan shall be regularly monitored and updated as the case may be. The objective of monitoring the APP is to check the “Plan” versus “Actual” status and gauge the performance and possibly re-align with the introduction of changes if necessary without breaking the requirements as contained in the law. PMU staff should constantly review procurement performance to see if there is slippage in any of the awards or execution of contracts that may require updating the APP to reflect the changes. The APP monitoring is essential in enabling the PMU in particular and the PE in general to gain a better understanding on the performance of the procurement function and build upon the best practices or take corrective measures where there are delays or changes in the plan so as maintain efficiency in the procurement process, and also improve forecasting and planning for other similar procurement activities.

Internal Auditors, as part of their audit work, should ensure that a PE has prepared an Annual Procurement Plan in accordance with the requirement of the Law. This should be checked against the requirement of CPI 2- **Appropriate preparation and implementation of Annual Procurement Plan (APP) shown in Annex 1**

5. PROCUREMENT PROCESS FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES

5.1. Introduction

A bulk of procurement carried by many PEs consist of goods, works and services which are required to enable them to run their operations.

In the context of this manual the following are the definitions of work, goods and services;

Goods are the raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;

Works are;

- All works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield;
- Any other civil works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing;
- Services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, satellite photography or seismic investigations.

Contracts which include the provision of works and services shall be regarded as works contracts if the total value of the works is greater than the value of the services covered by the contract.

Services referred here are service of a skilled or non-skilled nature, which is not a consultancy service and includes, but is not limited to, cleaning, security, maintenance, and repair services.

5.2. Key Stages in the Procurement of Works, Goods and Services

Figure 5.1 shows a flow chart of procurement process for works goods and services which is discussed in detail in this part. Key steps which shall be discussed include the following:

- Preparation of tendering documents and establish the approximate value of procurement;
- Decide on the method of tendering to be used;
- Invite eligible bidders;
- Preparation and submission of tenders;
- Receipt and Opening of Tenders;
- Evaluation of tenders; and
- Awarding of contract.

5.2.1 Preparation of Tendering Documents and Establishing Approximate Value

After preparation and approval of the Procurement plan, the next important issue to consider is the preparation of tender documents for the procurement in question. A PE wishing to commence competitive tendering is required by the PPA 2011 to provide all eligible prospective bidders with timely and adequate notification of the PEs requirements and an equal opportunity. This is achieved through well prepared tender documents.

According to **PPA 2011-S.38 (h)**, the PMU is responsible for the preparation and issue of tendering Documents in consultation with the user department. The PE must use the appropriate Standard Tender Document (STD) issued by the PPRA, as this is a mandatory requirement for contracts to be funded by the Government of Tanzania. The purpose of the STD is to provide PEs with one common standard draft document containing basic contractual provisions and safeguards which are required by the Government of Tanzania for the execution of public procurement and the use of public funds.

So far, the PPRA has issued the following Standard Tender Documents relevant for procurement of works, goods and services:

- Standard Tendering Documents Procurement of Non-Consultancy Services;
- Standard Tendering Documents Procurement of Goods- National and International Competition;
- Standard Tendering Documents Procurement of Medium and Large Works National and International Competitive Tendering;
- Standard Tendering Documents Procurement of smaller Large Works- National Competitive Tendering;
- Standard Invitation for Quotation for Procurement of Non-Consultant Services;
- Standard Invitation for Quotation for Procurement of minor works;
- Standard Invitation for Quotation for Procurement of goods;

The above documents have been issued as a trial version following the release of Gazetting of Public Procurement Regulations.

5.2.2 Decide on the Method of Tendering

The selection of the method of tendering will depend on the value and complexity of the assignment and the level of competition desired.

Since there are thresholds attached to different methods, the estimate of the works, goods or services to be procured as established will assist in the selection of the appropriate method. Therefore the PE, as part of preparation of the tender documents- particularly the specifications, PE will need to establish the estimated value for the procurement in question and this shall be used as a basis of selecting an appropriate procurement method.

The estimate of the value of the contract shall also enable the PE to decide on the amount of bid security required, in case where they to include it as a fixed amount in the tender document so that it is between 1.5 to 2.5 percent as recommended.

5.3. Invitation of Bidders

PEs may invite tenders through open tendering following the manner prescribed in **GN. 446-R181**. This can be very costly to administer because if a large number of tenders are submitted they will all require the same level of review and scrutiny so as to ensure fairness and equality of bidders. To avoid the burden of evaluating many tenders, a PE may decide to engage in a two stage tendering procedure- in which the first stage is used, through a pre-qualification process, to shortlist bidders with capacity and capability to participate in the tendering proceedings. In the second stage those who were shortlisted are issued with tender documents and invited to submit their tenders. This enables a PE to reduce the number of bids to be evaluated without reducing the level of competition as the prequalification stage is open to all competitors but simply seeks to evaluate the technical and financial capabilities of competitors before engaging them in the process of pricing and submitting a bid..

The invitation of tenders may be done in two ways

- Invitation through the publication of an announcement of tendering proceedings in the case of open tendering, where no pre-qualification has been conducted; or
- Invitation from the list of pre-qualified bidders established where a pre-qualification stage has been conducted.

GN. 446-R182 discusses important information to be included in the advertisement to tender. The content of the invitation to tender notice should be sufficient to inform all the bidders on the procurement requirements key specifications and conditions of execution so as to allow the bidders making an informed decision in order to be responsive and competitive.

5.4. Prequalification

GN. 446-R.119 to R.125 gives the procedure to be adopted for pre-qualification of contractors, suppliers or service providers. Prequalification is aimed at ensuring that only bidders who have the required capacity and capability are invited to tender for Public contracts. Capability is judged in accordance with the experience, technical and financial resources that an applicant possesses.

By deciding to Prequalify, the PE screens potential bidders and the process has the following benefits to the PE

- All bidders include overhead costs in their pricing. Through prequalification, potential bidders save the cost of preparing their bids hence reducing their overhead costs which may lead to their quoting lower bid prices in the long run, to the benefit of the PE.
- Leading contractors and suppliers, particularly the international ones, are more likely to bid knowing that competition is confined to only those qualified. This is also to the benefit of the PE.

- Prequalification measures the scale of interest by potential bidders. If the interest is low, for example, this will mean that the PE has to revisit the bidding conditions or scope of work to encourage healthy competition among bidders; and
- Prequalification leads to ultimate evaluation of bids from qualified bidders only and consequently results in cost and time saving for the PE as all unqualified bidders are not invited to tender.

On the other hand, prequalification has some potential disadvantages which include but not limited to:

- Risk of having a longer procurement lead time due to undergoing two processes (Prequalification and later Bidding). To avoid such delays and shorten the time to complete the procurement process, the PE can adopt good and efficient procurement scheduling methods such as prequalifying bidders while the Procurement Management Unit prepares the bidding documents and obtains the necessary approvals for their issuance immediately after the prequalification process ends.
- Prequalification increases the chances for collusion and price fixing by those prequalified as their names are known in advance of bid submission.

The process of pre-qualification of tenders including the opening and evaluation is the same as that of an open tender discussed in this manual. A duration of 30 and 21 days is required for the potential bidders to submit their pre-qualification applications in the case of international and national competitive tendering respectively as provided for in **8th Schedule of GN. 446**

5.5. Issue and Sale of Tender Documents

Any bidder interested to participate in the procurement proceeding by responding to the PE advert or accepting the invitation to participate through shortlisting shall be issued with a bidding document. The procedure on how to issue tendering documents is given in **GN. 446-R183 to R185**. It is important to ensure that the bidding document and subsequent amendment of the same are issued to all bidders at the same time. **GN. 446-R183** allows for sale of tender documents to recover costs of printing and copying and distribution. No element of profit is allowed. Prior inspection of documents is allowed in order to make a decision to buy or not buy the documents.

5.6. Preparation and Submission of Tenders

After the tender documents have been issued to bidders, most the work is done by bidders to prepare their tenders for submission. However, within PE, those relevant with procurement process particularly the PMU and user department should be organised to respond to queries for clarification from bidders and to organise site visit and pre-bid conference particularly in the case of procurement of works.

Clarifications and information to bidders

The PE may organise: a pre-bid conference in order to brief potential bidders or to offer the opportunity for them to seek clarifications; and/or a site visit, to enable bidders to gain access to the site for delivery of any proposed works, goods or services. Where a pre-bid conference is planned, it may be used to issue clarifications on issues sought by bidders

prior to the date of conference. **GN. 446-R189** gives procedures for pre-bid conference and on how to handle clarification and information from bidders. Any clarification or amendment to bidding documents through an addendum must be issued to all bidders at the same time.

Tendering period

Eighth Schedule of GN. 446 provides for a minimum tender period allowed under the law for different procurement methods. The period provided is in calendar days. PEs are therefore expected to fix a realistic period depending on the size and complexity of procurement- they should make a realistic estimate of time required for bidders to prepare and submit a competitive bid.

Through request of clarifications by bidders it may be necessary for the PE to increase the bid period to enable bidders to take into account any clarifications issued into the preparation and submission of their bids.

Check-list for setting the period for bid preparation:

- Is it national or international? Delays in mailing?
- Does it involve preparing a methodology, schedules, maps or other specialised professional diligences?
- Does it include options and the possibility of an alternative bid?
- Does it include very specific requirements for pricing that necessitates specific calculations, obtained quotes from other supplier or service providers?
- Is there a complex or unusual specification? For example the reference to an existing standard and the need for an equivalence.
- Is the level of sub-contracting expected to be important?
- Special restrictions and requirements?

Tender Securities

Tender Securities or tender securing declaration are part of the tendering documentation to protect the PE from suffering loss of time and resources in case a tenderer does not fulfill certain requirements of the Bidding documents. In simple terms, a Tender or Bid Security is a promise by the bidder to do or not to do something. In the legal world, such promises have penalties attached in case of the nonperformance of the promise.

If the tender documents indicate that a PE requires the tender to be accompanied by a tender security, then the requirement shall apply to all who respond to the invitation with no exceptions.

The PE shall specify in the tender documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Circumstances that may warrant forfeiture of the tender security include:

- Withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline, if so stipulated in the solicitation documents;
- Disagreement to arithmetical correction made to the tender prices;
- Failure to sign the procurement or disposal contract if required by the PE to do so;
- Failure to provide a required performance security after the tender has been accepted or
- Failure to comply with any other condition precedent to signing the procurement or disposal contract specified in the solicitation documents.

PEs should always remember to request for an extension of bid security when the bid validity period is extended

According to **GN. 446-R.24** the tender security or tender securing declaration shall remain valid for a period of not less than twenty eight days beyond the validity period of the tender, in order to provide the PE time to act if the security is called for.

Tender securities of unsuccessful tenderers have to be released not later than thirty (30) days after the expiry of the original or extended tender validity period, or upon the award of contract, whichever is earlier. The discharge of the tender security of the successful tenderer is only done when the tenderer has signed the contract and furnished the required performance security to the satisfaction of the PE.

Upon the occurrence of the following circumstances, the PE has no claim to the tender security submitted by the tenderer whatsoever:

- the expiry of the tender security (original or extended);
- the entry into force of a procurement contract and the provision of a security for the performance of the contract if such a security is required by the solicitation documents;
- the rejection by the PE of all tenders as allowed by the law;
- The withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

It should be noted that the amount of bid security should be high enough to discourage frivolous bids, but not so high as to discourage competition. Factors to be taken into account by the PE in fixing the amount are: cost to bidders of obtaining the security, the estimated value of the contract and the risk of bidders failing to fulfil the conditions of their bids. No clear guide is given in the Regulations but it is supposed to be in the range of 1.5 to 2.5 percent.

5.7. Tender Submissions

The PE shall fix the place for and a specific date and time as the deadline for the submission of tenders. The time for the tender opening shall be the same as the deadline for the receipt of tenders or promptly thereafter, and shall be announced, together with the place of the tender opening, in the invitation to tender.

Tenders in writing, signed and sealed in an envelope shall be delivered, by mail or by hand, to the address, within the time limit, and in the form and manner indicated in the invitation to tender and stipulated in the tender documents as issued by the PE. However, a tender may alternatively be submitted in any other form specified in the tender documents that provides a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality.

Where requirements for tender security or other securities have been stated in the tender documents, these shall be delivered not later than the closing date and time for the deposit or submission of the tenders in the amounts and in the form and manner stipulated.

Tenders received after the deadline for the submission of tenders stipulated in the tender documents shall not be opened or considered and shall be returned to the tenderer who submitted it.

Period of effectiveness of tender, modification and withdrawal of tenders

GN. 446-R191 requires that a PE has to ensure that it indicates the validity period for tenders that is sufficient enough to permit evaluation and comparison of tenders, for obtaining all necessary clearances and approvals, and for the notification of the award of contracts and finalize a contract with the successful tenderer. However, note has to be taken that the validity period does not exceed one hundred and twenty (120) days from the final date fixed for the submission of tenders though this may vary depending on the nature and complexity of the contract.

Sometimes, before the expiry of the original period of effectiveness of tenders, the PE may request (in writing) tenderers to extend the validity period for an additional specified period of time. Tenderers who refuse the request for the extension will have their tender securities valid up to the time that they indicate to be valid. Refusal by a tenderer to accept the request (for the extension) will not lead to forfeiture of the tender security and the same has to be returned to the tenderer after its expiration date. Such tenderer will no longer be considered as a bidder in that particular tender after the initial expiry date has been reached (because of the refusal to extend the validity).

Tenderers that agree to an extension of the tender validity period shall extend or procure an extension of validity of their tender securities they had provided or provide new tender securities to cover the extended validity period of their tenders.

The successful tenderer shall remain bound by his tender for a further period of thirty days following the receipt of communication notifying him of his selection. Unless otherwise stipulated in the solicitation documents, a tenderer may modify or withdraw the tender prior to the deadline for the submission of tenders without forfeiting its tender security.

5.8. Tender Receipt and Opening

The tender opening stage in the procurement process is one of the measures that can be an indicator of transparency in the administration of the process and upholding one of the key basic principles of good and proficient public procurement.

The PMU shall ensure that all tenders (including packages containing any tenders which cannot be placed in a locked tender box) are kept unopened in a secure place until the deadline time for opening the tender(s). All tenders received shall be registered as they arrive by hand or post and the registration number, date and time of arrival shall be recorded on the envelope. Tenders that are directly dropped in the tender box shall be registered during the opening ceremony.

Tender Opening Committee constituted in accordance with **GN. 446-R.56** shall convene a tender opening meeting of the tenders submitted in time as indicated in the tender documents or promptly thereafter.

ITT Clause 24.4 of Large and Medium Works Standard Tender Document issued by PPRA (Feb 2014)

Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the PE against any claim or failure to read out the correct information contained in the Tenderers' Tender.

All tenders submitted before the deadline time and date shall be opened in public, in the presence of the tenderers or their representatives and other parties who choose to attend. The names, addresses and contacts of the attendees shall be recorded by the secretary of the TB and be made part of the tender opening minutes (records).

During the public tender opening, the following information is read out and recorded;

- a) the tenderers' names,
- b) the tender prices and the total amount of each tender,
- c) written notifications of tender modifications and withdrawals,
- d) any alternative tenders (if they have been requested or permitted)
- e) any discounts,
- f) the presence of the requisite tender security, and
- g) Such other details as the tender board may consider appropriate shall, if any, be announced to those persons present at the opening of tenders.

Normally the information to be read out at the tender opening is specified in the Tender Data Sheet (TDS). For example Clause 18 of TDS for Large and Medium Works Standard Tender Document issued by PPRA (Feb 2014) requires that the list the appropriate details required to be announced at the Tender opening meeting be given as required in the Instruction to Tenderers (ITT) Clause 24.3. It is important to note any information which can be used to reject a tender should be read out during the opening. It is for that reason that, for example Clause 24.5 of ITT of the referred document, makes it necessary, as shown in Box for the tenderer to send in a representative with knowledge of the tender to confirm the information read out during the opening.

The recorded tender opening information may also be communicated on request to tenderers that have submitted tenders, but were unable to attend the opening ceremony or could not send in their representatives.

If a "two envelope" system of tendering has been adopted, it shall be announced that no price envelope has been opened.

Tenders received after the time stipulated, as well as those not opened and not read out at the tender opening, shall not be considered, and they shall be returned unopened.

Any discount which is not read out at the formal tender opening ceremony shall not be taken into account in the evaluation and comparison of tenders. It is therefore important for the person reading the tenders to ensure that no omission has been done while reading out the submitted tender documents during the opening ceremony as this may lead to disputes later.

In order to uphold the integrity of the procurement process, all information relating to the examination, tabulation, clarification, evaluation and comparison of tenders and recommendations concerning the award of the contract shall not be disclosed or communicated to tenderers or any person or persons not officially concerned with

such process before the award of the tender. Any attempt by a tenderer to influence the PE in the process and in decisions concerning the award of the contract, shall result in the rejection of his tender.

After tenders have been opened, no tenderer shall be permitted to alter his tender except for clarifications that do not change the substance and price of the tender which may be requested for by the PE. The request for clarification and the tenderers' responses must all be in writing.

5.9. Tender Evaluation

5.9.1 Evaluation Committee

The Accounting Officer is responsible for establishing a tender Evaluation Committee (EC) comprising of a not less than three and not more than five members. The tender evaluation committee members shall be recommended by the PMU and approved in writing by the Accounting Officer of the PE.

The tender evaluation committee shall evaluate on a common basis all tenders opened using the criteria explicitly stated in the tender documents. Tenders shall be comparable among themselves in order to determine the lowest evaluated cost for procurement of goods, works or services or the highest evaluated price for disposal of asset by tender.

5.9.2 Steps in the tender evaluation process

Figure 5.2 summarises the tender evaluation process for goods, works and services. The various steps are discussed herein.

Step 1: Record of tender opening

An official record of bid opening, identifying all the bids received, the bid prices and bid Security amounts/declaration (or alternative bids in case of sale of assets by tender) announced at the public opening of bids, should be formally prepared. This should be passed over to the evaluation committee.

Step 2: Preliminary Examination of Bids

This step involves the examination of all tenders received, for substantive technical and commercial responsiveness in accordance with the invitation to tender/bidding documents. This exercise aims at eliminating bids which are not responsive to technical specifications and important commercial requirements, to the extent that they are entirely unacceptable and merit no further

GN. 446-R204 (2) Material deviations to commercial terms and conditions, which justify rejection of a tender, shall include the following:

- a) Failure to sign the bid form and price schedules by the authorized person or persons;
- b) failure to satisfy eligibility requirements;
- c) failure to submit a tender security as specified in the tendering documents;
- d) failure to satisfy the tender validity period;
- e) inability to meet the critical delivery schedule or work schedule clearly specified in the tendering documents, where such schedule is a crucial condition with which tenderers must comply;
- f) failure to comply with minimum experience criteria as specified in the tendering documents;
- g) conditional tenders such as conditions in a tender which limit the tenderer's responsibility to accept an award;
- h) inability to accept the price adjustment formulae of the tendering documents;
- i) stipulating price adjustment when fixed price tenders were invited;
- j) subcontracting in a substantially different amount or manner than that permitted;
- k) failure to submit major supporting documents required by the tendering documents to determine substantial responsiveness of a tender.

consideration.

a) Aspects to consider in examination of bids:

- Are bids complete and signed?
- Have all documents asked for in the tendering document been submitted?
- Have all documents been duly initialed and signed?
- Has tender security/bond/declaration been furnished?
- Is the bidder responsive to eligibility conditions?
- Are the goods responsive to eligibility criteria?
- Any major deviations from commercial tender conditions?

GN. 446-R204 (2) gives what constitute material deviation as shown in the attached Box.

b) For tenders to be considered responsive there should be:-

- no major exceptions/
- deviations to the commercial tender conditions
- Compliance with technical specifications: Tenders must meet the letter and intent of the specifications.

c) Bids meeting the above mentioned conditions are declared to be substantially responsive.

GN. 446-R205(2) All tenders shall be checked for substantial responsiveness to the technical requirements of the tendering documents and non-conformity to technical requirements, which are justifiable grounds for rejection of a tender includes the following:

- a) Failure to tender for the required scope of work as instructed in the tendering documents and where failure to do so has been indicated as unacceptable;
- b) failure to quote for a major item in the package;
- c) failure to meet major technical requirements, such as offering completely different types of equipment or materials from the types specified, plant capacity well below the minimum specified, equipment not able to perform the basic functions for which it is intended;
- d) presentation of absolutely unrealistic and inadequate implementation plans and schedules regarding performance, technical or service factors.

Step 3: Detailed Technical Evaluation

This step involves a comparison of each bid to the technical requirements of the description of goods, works or services on a pass or fail basis, to determine whether the bids are technically responsive.

The Evaluation Committee shall conduct a technical evaluation by comparing each bid to the technical requirements of the description of goods, works or services in the bidding document so as to determine the responsiveness of bids.

The technical evaluation shall determine whether bids are, or are not, substantially responsive to the technical standard defined in the bidding document. The factors taken into account shall be those indicated in the bidding document only and may include:

- a) Conformity to specifications, standards, drawings or terms of reference, without material deviation or reservation;

- b) Satisfactory understanding of an assignment, as demonstrated by any methodology or design; or
- c) Suitable staffing, equipment and machinery capacity or arrangements for supervision or management of an assignment;
- d) Any other criteria that has a direct relationship with the performance of the contract and the delivery of the procurement within a specified time frame.

The evaluation shall not take into account any requirements which were not included in the bidding documents. Any material deviations should result in rejection of the bid and such bids should not be subject to financial evaluation and comparison. Non - material deviations may be allowed and corrected

Step 4: Financial Evaluation

After the technical evaluation, financial evaluation is conducted to determine the evaluated price of each bid and to determine the lowest evaluated bid, which is substantially responsive to the requirements of the bidding document. The evaluated price for each bid shall be determined by:

- a) Taking the bid price, as read out at the bid opening;
- b) Correcting any arithmetic errors, in accordance with the methodology stated in the bidding document;
- c) Applying any non-conditional discounts offered in the bid;
- d) Making adjustments for any non-material non-conformity, error or omission;
- e) Applying any additional evaluation criteria, through an increase or decrease to the bid price in accordance with the weighting system established in the bidding documents;
- f) Converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and
- g) Applying any margin of preference indicated in the bidding document.

Bids must be compared by ranking them according to their evaluated price and determining the bid with the lowest evaluated price. Where the bidding documents included more than one lot and permitted bidders to offer discounts, which were conditional on the award of one or more lots, the Evaluation Committee has to conduct a further financial evaluation, to determine the lowest evaluated combination of bids.

5.10. Award of contracts

The Tender Board shall review the evaluation and recommendation made and may either

- a) approve the recommendation and authorize the PE to accept the tender and award a contract in the form specified in the tender documents; or
- b) refuse to authorize acceptance of any of the tenders and refer the evaluation back to the PMU with an instruction to re-evaluate the tenders or a recommendation for re-tendering or other action.

The award shall be made to the selected tenderer within the period of tender validity following successful negotiations and absence of bid challenge during the cool off period.

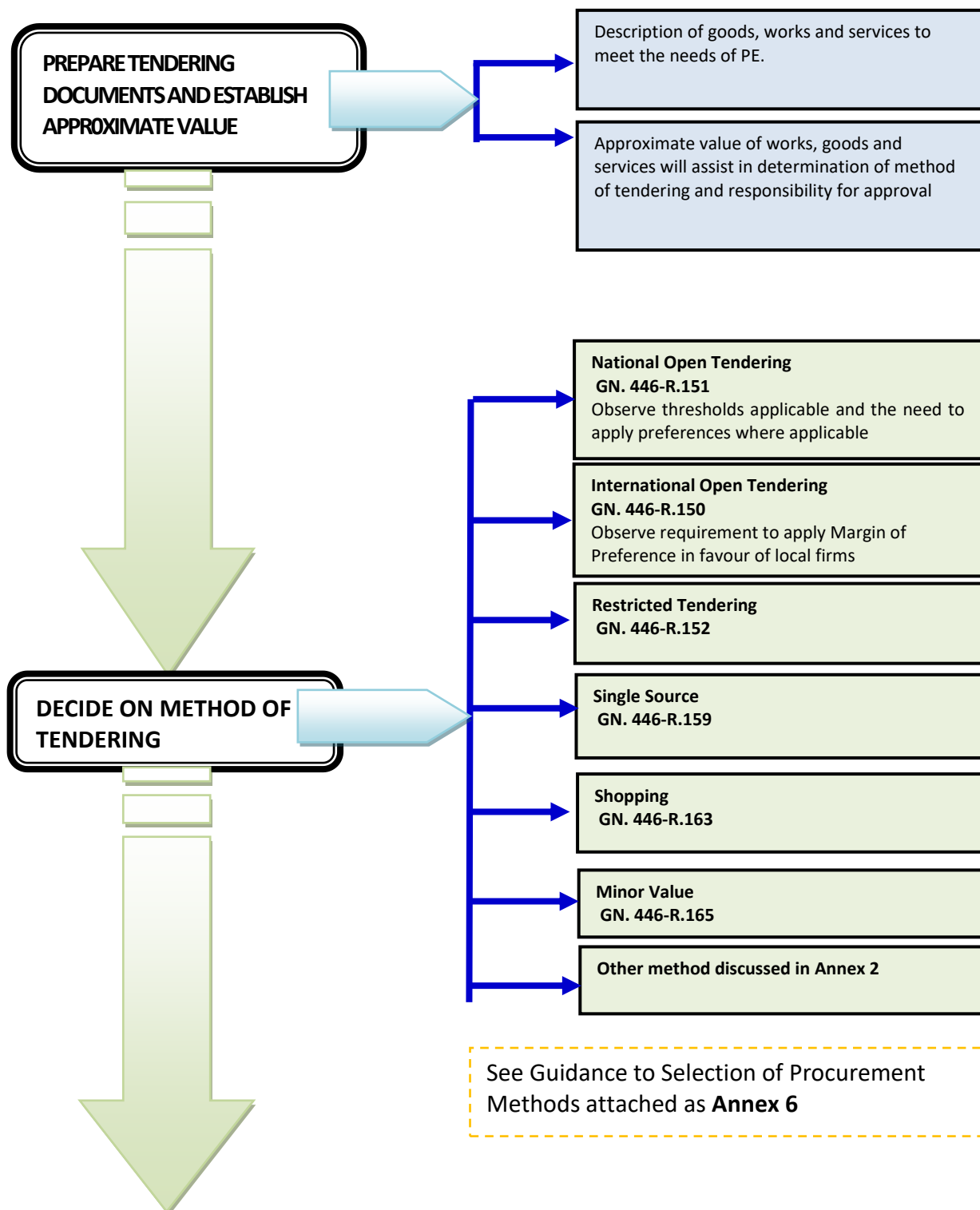


Figure 5.1 A flow Chart of Procurement Process for Goods, Works and Services

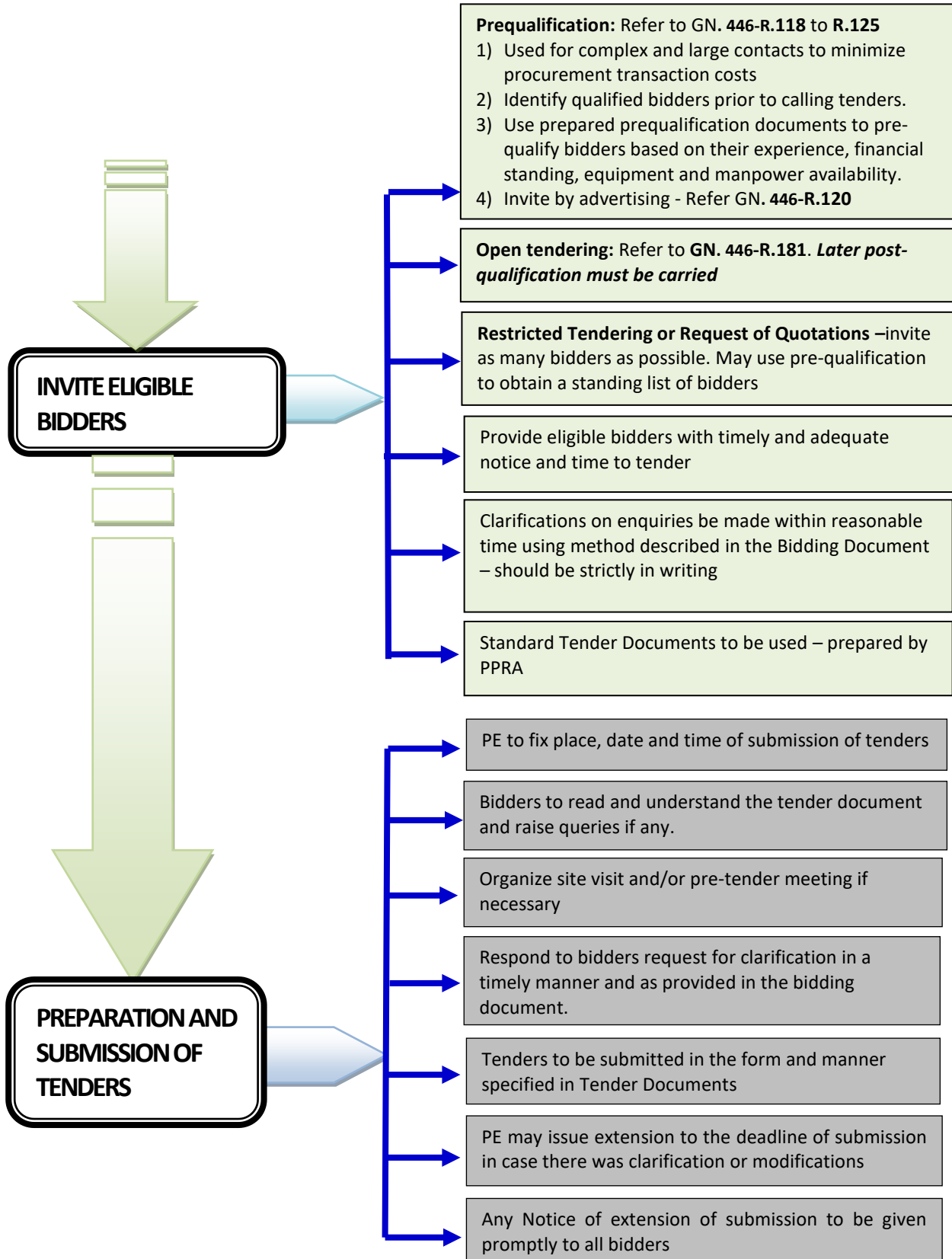


Figure 5.1 A flow Chart of Procurement Process for Goods, Works and Services (Cont'd)

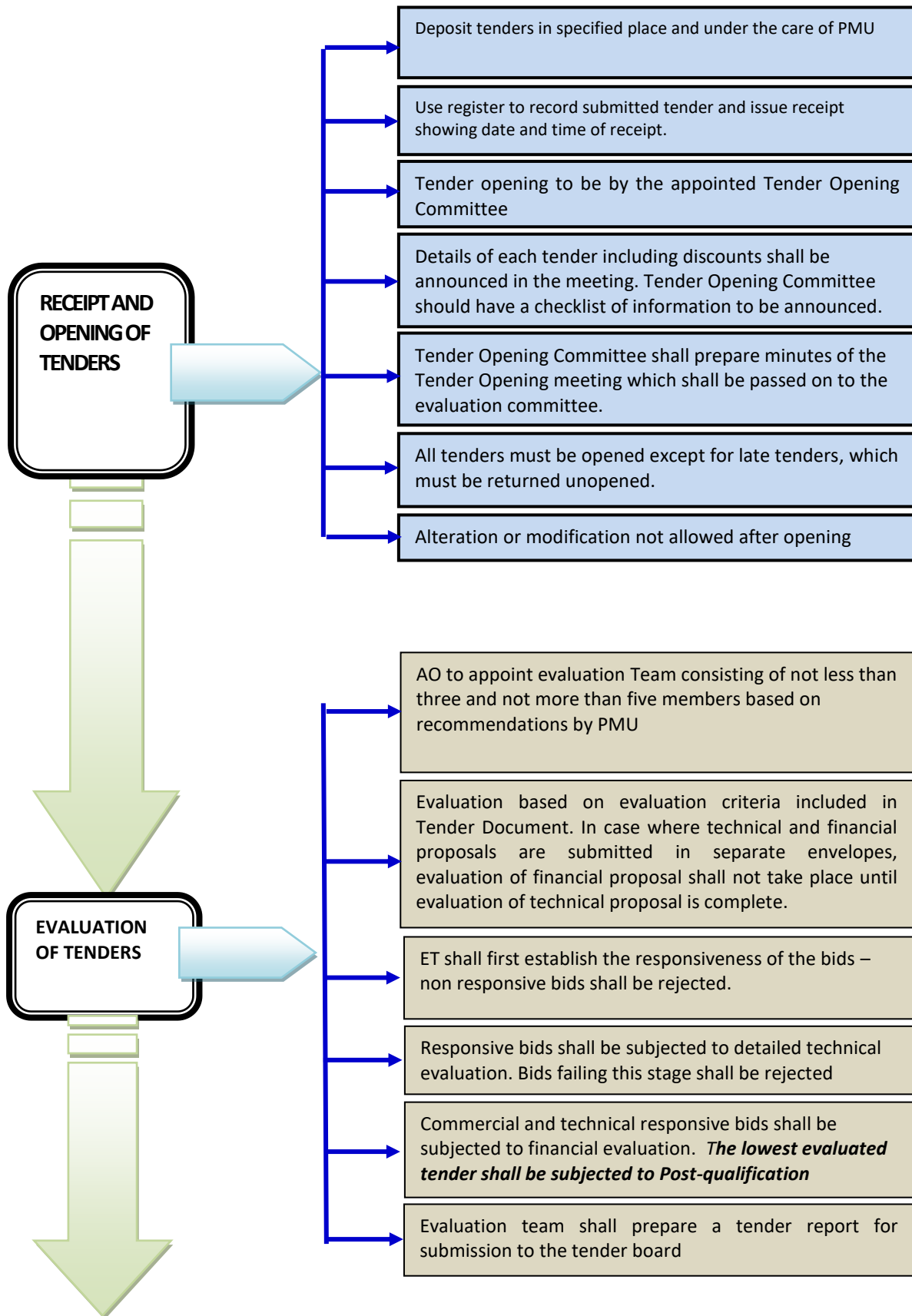


Figure 5.1 A flow Chart of Procurement Process for Goods, Works and Services (Cont'd)

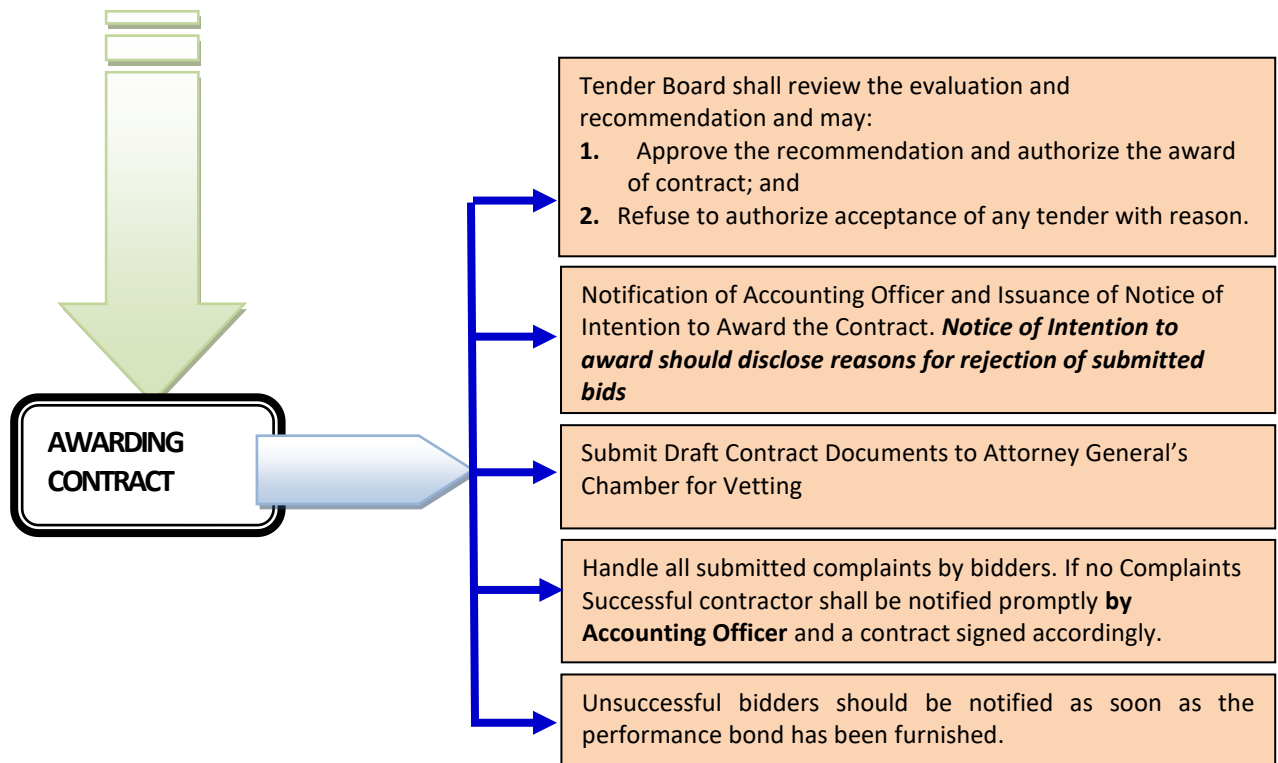


Figure 5.1 A flow Chart of Procurement Process for Goods, Works and Services (Cont'd)

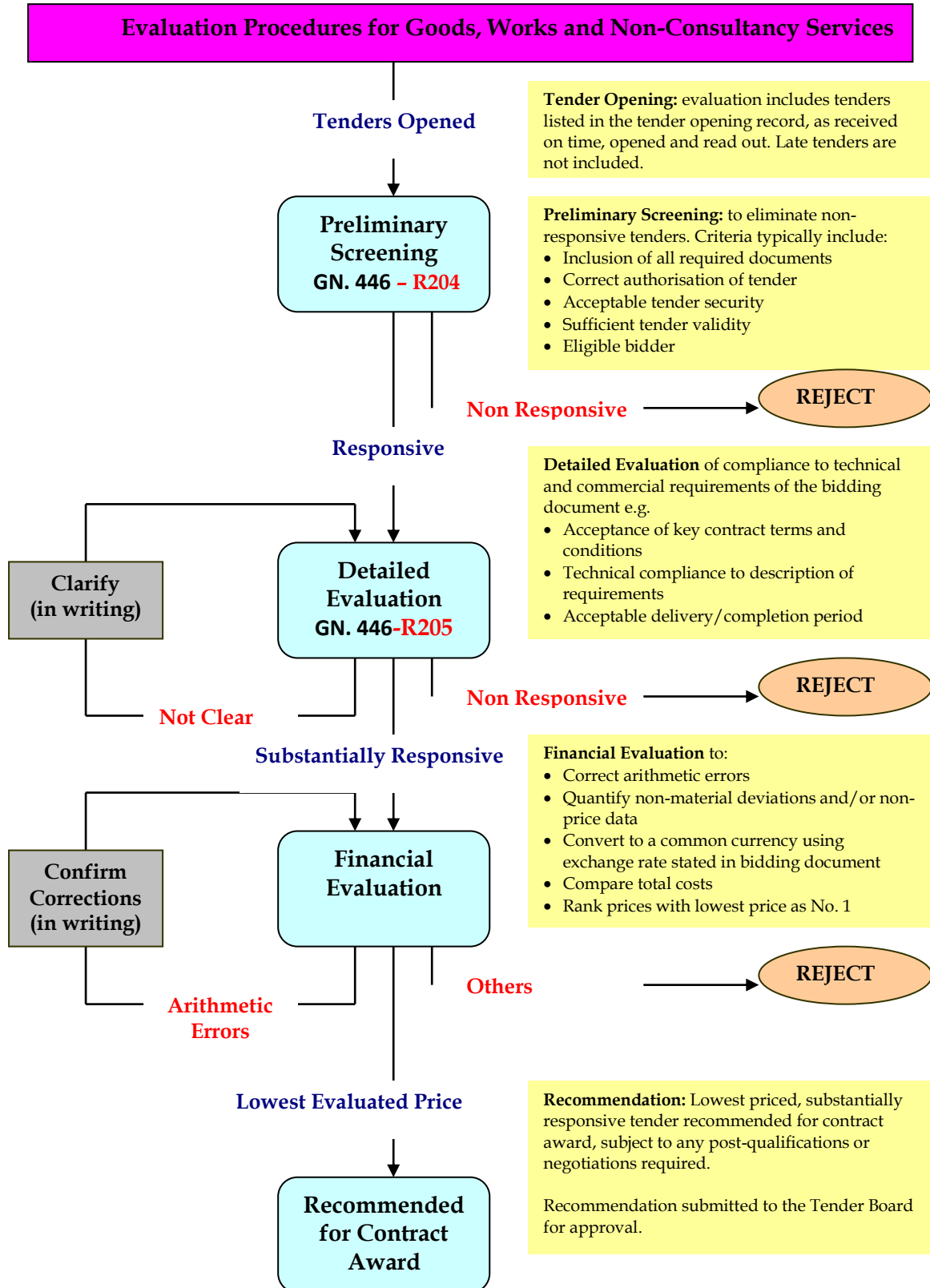


Figure 5.2 Evaluation Procedures for Goods, Works and Services

6. PROCUREMENT OF CONSULTANCY SERVICES

6.1. General Introduction

Consultancy services is any object of procurement or disposal other than works and goods and includes professional, non-professional and commercial types of services as well as goods and works which are incidental to but not exceeding the value of those services.

6.2. Procurement of Consultancy Services through the Request for Proposal Method

Consultancy services are invited using Request for Proposal Method. Part IX of GN. 446 gives five methods of selection of Consultants under Request for Proposal Method. These are

a) Quality and Cost Based Selection (QCBS)

Selection Procedure Based on Combined Technical Quality and Price Consideration or Quality and Cost-Based Selection (QCBS) is the standard method of selection for most consultant services, and uses a merit-point score system. It is a procedure based on the quality of the proposals and the cost of the services offered. The technical capabilities and experience of the Consultants and Personnel, and the quality of the proposal submitted in response to the Terms of Reference, will receive the major percentage of the total points to be awarded. Because under QCBS the cost of the proposed services is a factor of selection, this method is appropriate when:

- the type of service required is common and not too complex;
- the scope of work of the assignment can be precisely defined and the TOR are clear and well specified; and
- the PE can estimate with reasonable precision the staff time, the assignment duration, and the other inputs and costs required of the consultants;

b) Quality Based Selection (QBS)

This method is appropriate for the following types of assignments:

- Complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants.
- Assignments that have a high downstream impact and in which the objective is to have the best experts; and
- Assignments that can be carried out insubstantially different ways, such that proposals will not be comparable.

In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposal at the same time, but in separate envelopes (two-envelope system). If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the consultant with the highest ranked technical proposal will be requested to submit a detailed financial proposal. The PE and the consultant shall then negotiate the financial proposal, including remuneration and other expenses and the contract. All other aspects of the selection process shall be identical to those of QCBS which are discussed in detail in the next section.

c) Least Cost Selection (LCS)

This method is only appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of non-complex works, and so forth) where well-established practices and standards exist. Under this method, a minimum qualifying mark for the quality is established. Proposals, to be submitted in two envelopes, are invited from a shortlist. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected, and the financial proposals of the rest are opened in public and evaluated. The firm with the lowest evaluated price shall then be selected.

d) Fixed Budget Selection (FBS)

This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price proposals shall be opened in public and prices shall be read out aloud and shall be subjected to an evaluation. Proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract.

e) Single Source Selection (SSS)

Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. Single-source selection may be appropriate only if it presents a clear advantage over competition:

- For tasks that represent a natural continuation of previous work carried out by the firm; or
- in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency; or
- for very small assignments; or
- when only one firm is qualified or has experience of exceptional worth for the assignment.

f) Consultants Qualification Selection (CQS)

This method may be used for small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, prepare the TOR, request expressions of interest and information on the consultants' experience and competence relevant to the assignment, establish a shortlist, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

6.3. Key Stages in the Procurement of Consultancy Services

Key stages of procurement of consultancy services are shown in **Figure 6.1** and are discussed hereunder.

6.3.1 Establishment of Procurement Needs for Selection of a Consultant

Not every service of intellectual nature in a PE requires the services of a Consultant. A PE must therefore make a decision on services which will require the use of consultants based on

- Availability of necessary expertise, both qualitative and quantitative, within the organization to carry out the assignment;
- The completion requirements of the assignment compared to the workload of its staff.

PE must make a decision on which is cost effective and sustainable – the use of consultant or its staff. Once a decision is made to use consultant then it must be included in the procurement plan.

6.3.2 Decision on the Method of Procurement.

PE is required to select the method of procurement depending on the nature of the assignment. For Request for Proposal Method a decision shall be made on the use of any of its variants mentioned in **Section 6.2**. The use of any variant of Request for proposal method requires the approval of Tender Board.

6.3.3 Preparation of Terms of Reference

Preparation of Terms of Reference (TOR) is required under **GN. 446-R.275**. The TOR should be comprehensive enough to enable prospective Consultants understand clearly the scope of the assignment.

The TORS should provide sufficient information to enable bidders to understand the services required by the PE. They should be complete, precise and clear, but should not be over-prescriptive, where the success of an assignment is largely dependent on the skills and experience of the consultants. Well-prepared TOR will facilitate the preparation of proposals by bidders and the evaluation of proposals by the PE.

The precise contents of the TORS will be determined by the individual assignment, but should include the following details, where applicable:

- the background to the assignment, including details of any larger project which the assignment will be part of;
- the objectives of the assignment and what it is expected to achieve;
- a description of the scope of the services required;
- the specific deliverables required, such as study reports and recommendations, software, databases, bidding documents, drawings, specifications, maps, software, training materials etc and the dates by when they are required;

- requirements for the transfer of knowledge or training programmes;
- the role, qualifications and experience of any key staff required;
- the duration of the assignment and expected completion dates;
- any facilities, services or resources to be provided by the PE, including any counterpart staff;
- arrangements for reporting to the PE, including lines of communication and the contact point for management and administration of the assignment;
- a schedule of any reports required, including inception, progress and final reports; any other details or requirements relevant to the assignment.

6.3.4 Preparation of Cost Estimate and Budget

PEs are required to ensure that they have sufficient funds before they invite tenders. It is therefore important to establish the cost estimate for an assignment before inviting consultants to submit their proposals. For some methods of procurement like Fixed Budget Selection – the budget will be expected to be disclosed to consultants and therefore it needs to be established.

The Cost Estimates or Budget should be based on the assessment of the resources needed to carry out the assignment, staff time, logistical support, and physical inputs (for example, vehicles, office space and equipment). Costs shall be divided in two broad categories: Fee or remuneration and Reimbursable costs.

6.3.5 Invitation of Expression of Interest

Invitation for Expression of Interest as explained in **GN. 446–R.280** requires tenderers to be given 14 and 30 days under national and international competitive selection respectively to submit their expression of interest to the PE for performing a given assignment. The process is covered under **GN. 446-R.281**.

The expression of interest (EOI) procedure obtains and assesses information on the qualifications and experience of potential bidders, in order to restrict actual bidding to a list of qualified bidders. This is achieved through the publication of a notice calling for expressions of interest, the receipt and assessment of expressions of interest and the development of a limited shortlist.

6.3.6 Shortlisting of Consultants

Shortlisting of Consultants shall take into account **GN. 446-R.281** by ensuring that those shortlisted possess the necessary qualification and experience to undertake the assignment if selected. Apart from using expression of interest to obtain consultants, pre-qualification may be used for complex assignment while for less competitive assignments the shortlist may also be based on PEs own experience of consulting firms.

6.3.7 Request for Proposals

Request for Proposals from the shortlisted Consultants shall be carried out in accordance with **GN. 446-R.287**. The information to be included in the RFP is particularly covered **GN. 446-R.289** and it should be sufficient enough to enable the Consultant prepare his proposal in the manner consistent with the PEs requirements and also how the proposal shall be submitted and evaluated. PEs are required to use Standard Request for Proposal Documents issued by PPRA.

Request for Proposal Document is critical to the success of the tendering process. It informs consultants of:

- the precise description of the services required
- the rules for the tendering process;
- the evaluation criteria and methodology which will be applied;
- any eligibility and qualification criteria which will be applied; and
- the type and conditions of the proposed contract.

A well drafted bidding document should result in a successful procurement process.

6.3.8 Receipt and Opening of Proposals

GN. 446-R.295 discusses in detail on receipt and opening of Proposals. The time allowed for submission of proposal shall depend on the assignment, but normally shall be 30 or 45 days for national and international selection respectively. The firms may request clarifications about the information provided in the RFP. The clarifications must be given in writing and copy to all the firms. The technical and financial proposals shall be submitted at the same time but in different sealed envelopes. The technical proposals shall be opened immediately by the Tender Opening Committee, after the closing time for submission of proposals. Any proposals received after the closing time shall be returned unopened.

The public tender opening is an important step in the tendering process as:

- opening tenders publicly helps to demonstrate that the tendering process is transparent and increases bidders' confidence in the public procurement process;
- reading out technical scores and prices at the financial opening should avoid any disputes regarding changes of price or the evaluation results at a later date; and
- the formal procedure, which coincides with the tender closing, should prevent late tenders from being included in the evaluation.

The procedure for Opening

The outer envelopes of tenders, which have been received on time, are opened publicly, in the presence of consultants to obtain the separate envelopes containing the technical and financial proposals within. The technical proposals are then opened and summary details read out and recorded. Financial proposals are kept sealed until the technical evaluation has been completed and approved.

The financial proposals of tenders proceeding to the financial evaluation are opened publicly at a separate tender opening meeting, at a date and time notified to the bidders whose technical proposals have been evaluated and accepted after the technical evaluation. Total prices quoted, together with all itemised unit prices, together with the technical scores awarded to bidders in the technical evaluation, are read out and recorded.

6.3.9 Evaluation of Proposals

Precise evaluation procedures vary between the different methodologies, but all consist of three stages:

- a preliminary screening, to eliminate proposals which do not comply with the basic requirements of the Request for Proposals Document and bidders who do not meet mandatory eligibility requirements;
- a detailed evaluation, to determine whether proposals are responsive to the terms of reference in the RFP Document, to assess the relative quality of the proposals, using a merit point scoring system and to determine which proposals should proceed to the financial opening and evaluation; and
- a financial evaluation to examine the prices of the proposal or proposals and determine which is the successful proposal and should be recommended for award of contract.

GN. 446-R.299 to R.303 gives the procedures to be followed in the evaluation of technical and financial proposals.

Selection of Evaluation Committee

Formulation of an evaluation committee consisting of not less than three and not more than five members is covered in **GN. 446-R.297**. selection of an appropriate Evaluation Committee is critical to the whole proposal evaluation process. In identifying staff to provide inputs to an evaluation or to be members of an evaluation committee, the head of the PE must consider the type of skills, knowledge or experience needed, which might include:

- procurement and contracting skills;
- technical knowledge;
- financial management skills;
- legal expertise;
- representation by the end user; and
- specialist knowledge or experience,

Stages of Evaluation of Consultant's Proposals

Evaluation procedure for consultancy services for QCBS, QBS and LCS are summarised in **Figures 6.2, 6.3 and 6.4** respectively.

Preliminary Screening

The preliminary screening is conducted to determine whether proposals comply with the basic instructions and requirements of the RFP Document. It enables the evaluators to

eliminate the weakest proposals, without the time and effort spent in conducting a detailed point evaluation. The preliminary screening can also be used to assess whether bidders meet the mandatory eligibility.

The preliminary screening is conducted on a Pass or Fail basis, with proposals that are not substantially compliant being rejected. The criteria to be used for the preliminary screening depend on the requirements and instructions of the RFP Document, so the preliminary screening must always start with a review of the RFP Document to list the requirements to be met. As guidance only, the preliminary screening might typically include checks of the following:

- submission of an original and the correct number of copies of the proposal;
- submission of all forms and documents required, including, in particular the proposal submission form;
- signature and authorisation of the proposal in accordance with the instructions in the RFP Document, including any required power of attorney;
- signature of curriculum vitae by proposed consultants, if required;
- submission of a separately sealed financial proposal;
- correct proposal validity;
- submission of any additional documentation required; and
- whether the bidder meets the mandatory eligibility requirements.

Detailed Technical Evaluation

The detailed evaluation must only be conducted on proposals which were determined to be substantially responsive during the preliminary screening. The evaluation of technical proposals will strictly follow the criteria provided in the Instruction to Consultant in the Request for Proposal Document particularly with regard to weights attached to each evaluation criteria of the technical proposal.

Financial Evaluation

The proposal or proposals proceeding to the financial evaluation will be determined by the relevant methodology for the technical evaluation i.e. will depend on whether the method adopted is QCBS, QBS, LCS or FBS.

The financial evaluation is conducted to determine the evaluated price of proposals, compare the proposals and determine the successful proposal, i.e. the proposal which should be recommended for award of contract. The financial evaluation and the determination of the successful proposal differ according to different evaluation methodologies.

Unless otherwise required by the evaluation methodology or the instructions in the RFP Document, the procedure for determining the evaluated price of each proposal for QCBS is as follows:

- determine the total proposal price, including or excluding particular costs, as indicated in the RFP Document e.g. the RFP Document may state that all taxes and duties are to be included in the evaluation;

- correct any arithmetical errors
- assess whether all items are included in the proposal price and add the cost of any missing items;
- convert all proposals to a single evaluation currency for purposes of comparison, using the currency and the date and source of the exchange rate specified in the RFP Document;
- apply any margin of price preference;
- determine the total evaluated price of each proposal.

Financial scores must be awarded using the method specified in the RFP document. This is normally as follows:

- the lowest priced proposal is given a financial score of 100
- all other proposals are given a financial score proportionate to this, using the formula

$$S_f = \frac{100 \times F_m}{F} \quad \text{in which}$$

S_f denotes the financial score of the proposal under consideration;

F_m is the price of the lowest price proposal;

F denotes the price of the proposal under consideration.

For example, if prices were as follows:

	Proposal A	Proposal B	Proposal C
	shs 5,000,000	shs 4,500,000	shs 6,000,000
Weight	$100 \times 4,500,00/5,000,000$ = 90%	100%	$100 \times 4,500,000/6,000,000$ = 75%

Combining Technical and Financial Scores for QCBS

The technical and financial scores must be weighted using the weights stated in the RFP document. This is normally in the range of 70-90% for the technical score and in the range of 10-30% for the financial score. The combined weights must always total 100%.

Example

	Original	Weight in RFP document	Calculation	Weighted
Technical	75	80%	$75 \times 80/100$	60
Financial	85	20%	$85 \times 20/100$	17
Total		100%		77

Validity of the Proposal

Evaluation of proposals must be conducted within their validity period. The proposal validity period requested in the RFP Document should normally be sufficient to enable the PE to undertake both the technical and financial evaluations, obtain approval from the Tender Board and award a contract. Therefore, extensions to the validity of proposals should not normally be required.

Where an extension to the validity of proposals is required, all Consultants should be requested, in writing, to extend the validity of their proposals for an additional specified period of time. This request should be issued a reasonable period before the expiry of the validity of proposals to give sufficient time for responses to be received.

Consultants must not be permitted to change the price, or any other details, of their proposal, when extending the validity. Any consultant is free to refuse to extend the validity of his proposal.

6.3.10 Negotiations

GN. 446-R.308 provides that PE may negotiate with the person who submitted successful proposal. It is a practice that negotiations be conducted by a minimum of three people, who will include staff with technical knowledge of the services being procured and who are able to represent the needs of the end user.

The Head of the PE must select the most appropriate members of staff to conduct negotiations. Where it offers benefits of continuity or significantly reduces the amount of preparation work required, staff who contributed to the evaluation should be used, as they will already be familiar with the requirements of the PE, as defined in the bidding document, the contents of the successful tender, the reasons why negotiations were recommended, the areas requiring negotiations and the objectives of those negotiations. The appropriate number and type of staff will depend on the type, value and complexity of the procurement, the areas which require negotiations and the extent of the negotiations.

In identifying staff to be involved with negotiations, the head of the PE must consider the type of skills, knowledge or experience needed, which might include:

- procurement and contracting skills, including experience of negotiations;
- technical knowledge;
- legal expertise;
- representation by the end user.

It is important that members of the Tender Board should not be involved in conducting negotiations, but only in approving the results and recommendations. If members of the Tender Board are selected as negotiators, they will be in conflict of interest because they will then end up reviewing and approving their own work. The negotiation work should be conducted by one group of people, and the approvals must be sought from another group, so that the one can check the work of the other.

Negotiations may not relate to the price or substance of tenders or proposals e.g. man/month rates or unit rates (i.e. prices) specified by the bidder in his tender, but only to

minor technical, contractual or logistical details. As guidance only, negotiations may normally relate to the following areas:

- minor alterations to technical details, such as the terms of reference, the scope of work, the specification or drawings;
- minor amendments to the Special Conditions of Contract;
- finalising the payment arrangements;
- mobilisation arrangements;
- agreeing final delivery or completion schedules to accommodate any changes required by the PE;
- the proposed methodology or staffing;
- inputs required from the PE;
- clarifying details that were not apparent or could not be finalised at the time of bidding;
- the bidder's tax liability in Tanzania, if the bidder is a foreign company.

Negotiations must not be used to:

- substantially change the technical quality or details of the requirement, including the tasks or responsibilities of the bidder or the performance of the services;
- substantially alter the terms and conditions of contract stated in the Request for Proposal;
- reduce unit rates or reimbursable costs;
- reduce work inputs solely to meet the budget; or
- substantially alter anything which formed a crucial or deciding factor in the evaluation of the tenders or proposals.

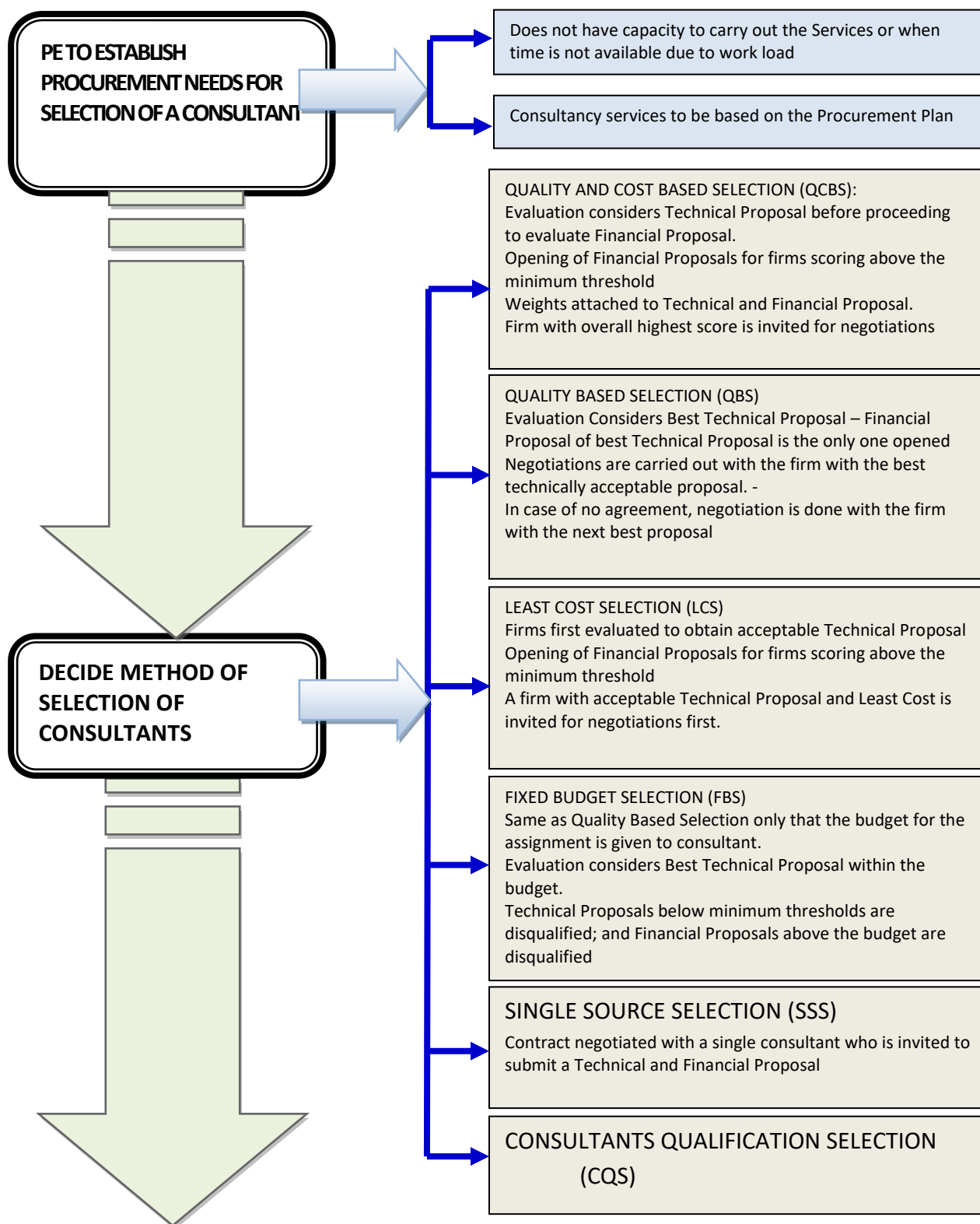
In the case of consultancy services, the bidder should not be allowed to substitute key staff, unless the PE and the bidder agree that delays in the procurement process, changes in the terms of reference or other unavoidable circumstances make it necessary.

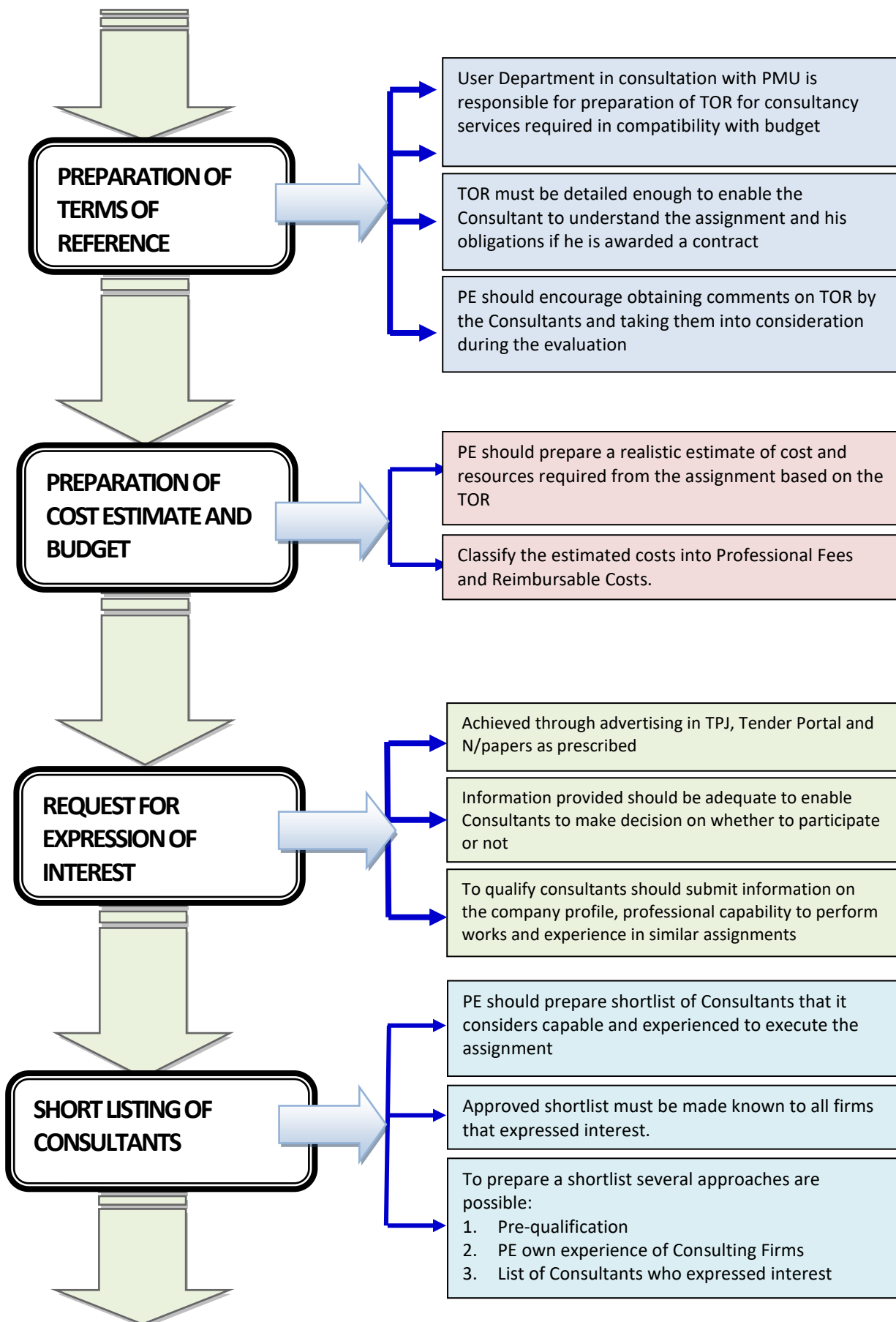
6.3.11 Award of Contract

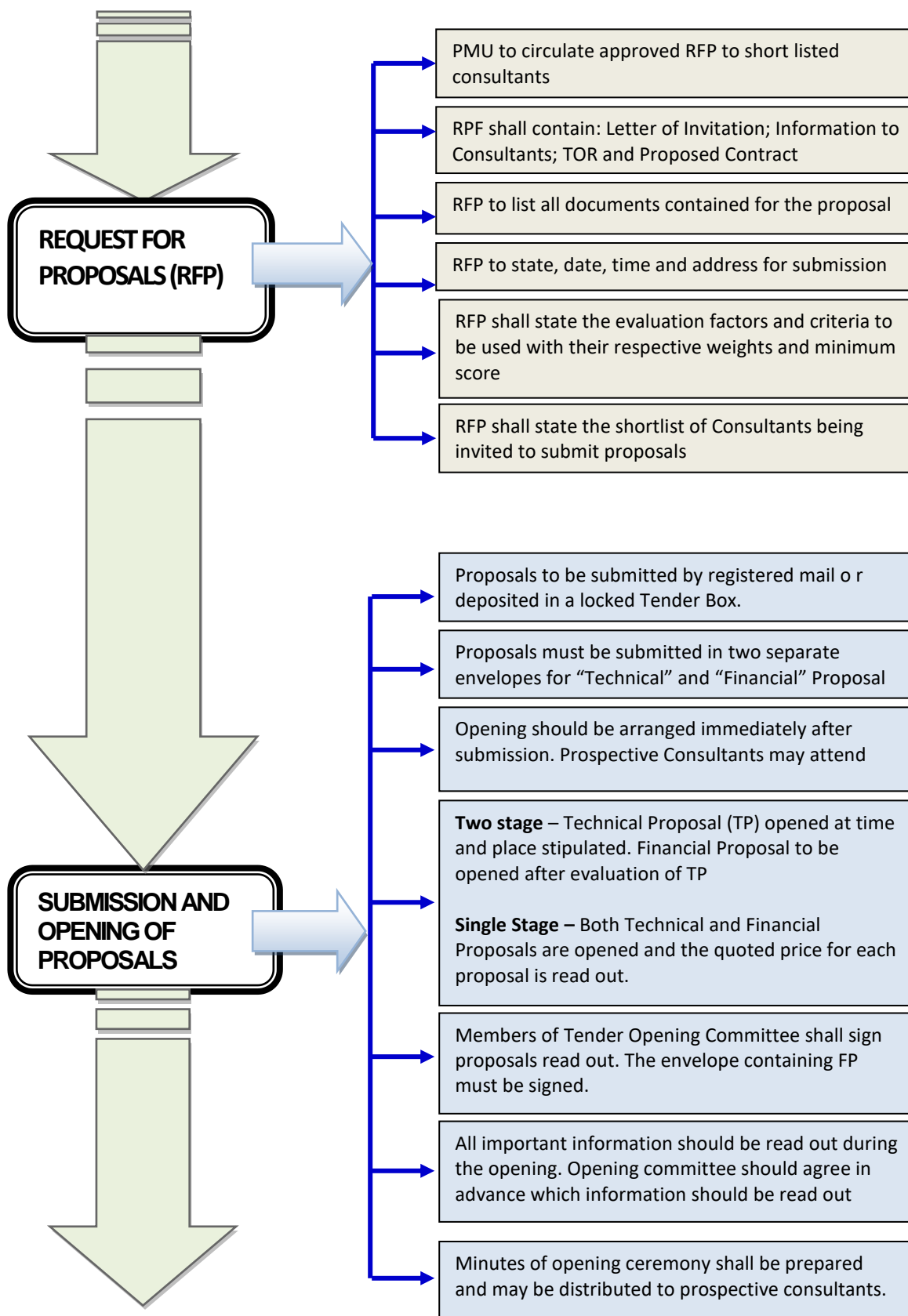
Following negotiations, the recommendations made to the Tender Board may include:

- proceed with contract award to the successful bidder, incorporating the revisions agreed during negotiations;
- revise the objectives of the negotiations and negotiate further on specified areas;
- terminate the negotiations, where they have failed to result in an acceptable contract, reject the bidder and award the contract or hold negotiations with the next lowest ranked responsive bidder;
- cancel the procurement proceedings, where it is believed that the original Request for Proposal document was flawed, the need has changed or the budget is insufficient for the requirement.

Internal Auditors, as part of their audit work, should ensure that a PE has carried out the procurement process for in accordance with the requirement of the Law. This should be checked against the requirement of CPI 3- **Appropriateness of the Tender Process - shown in Annex 1.**







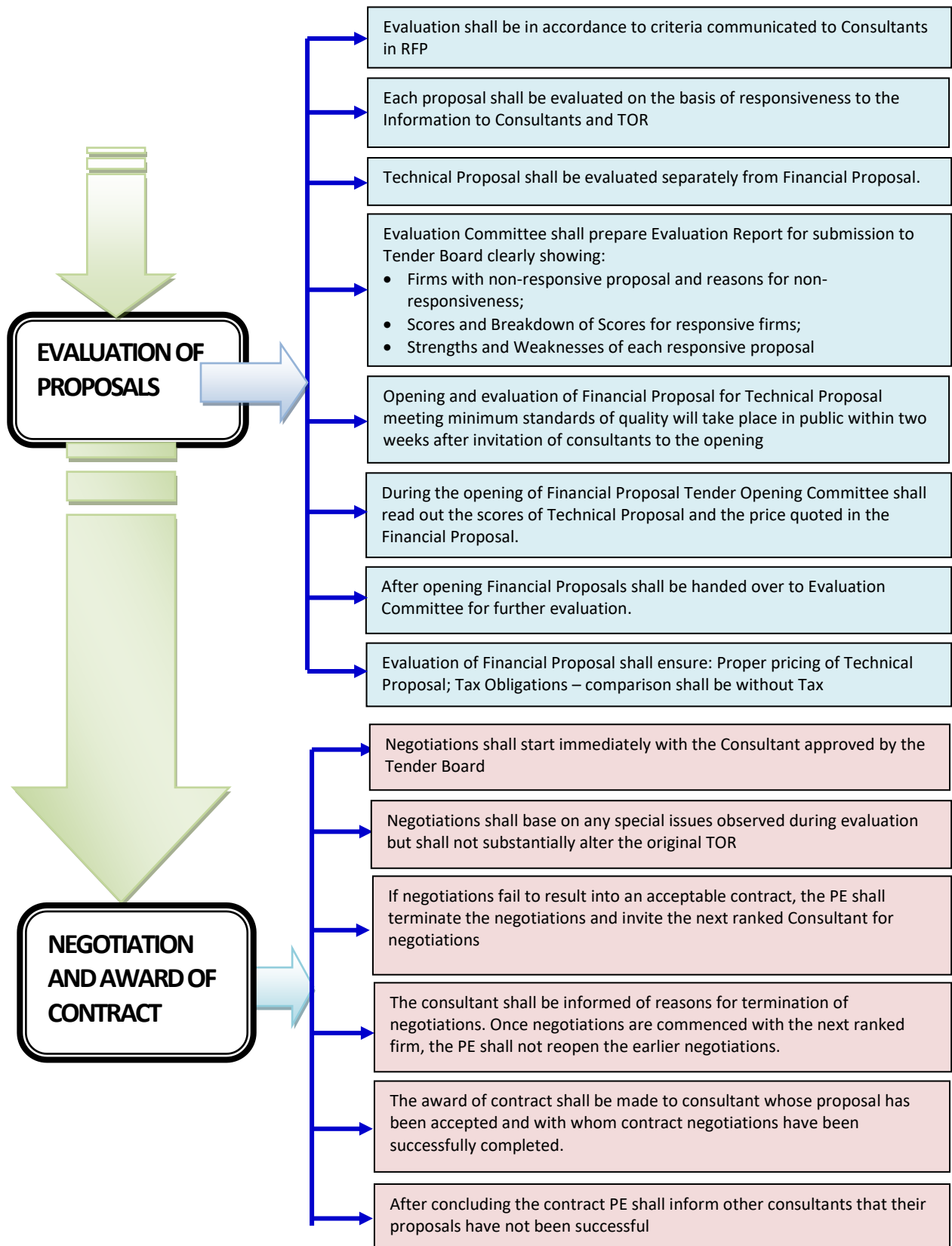


Figure 6.1: A flow chart of Procurement Process for Consultancy Services

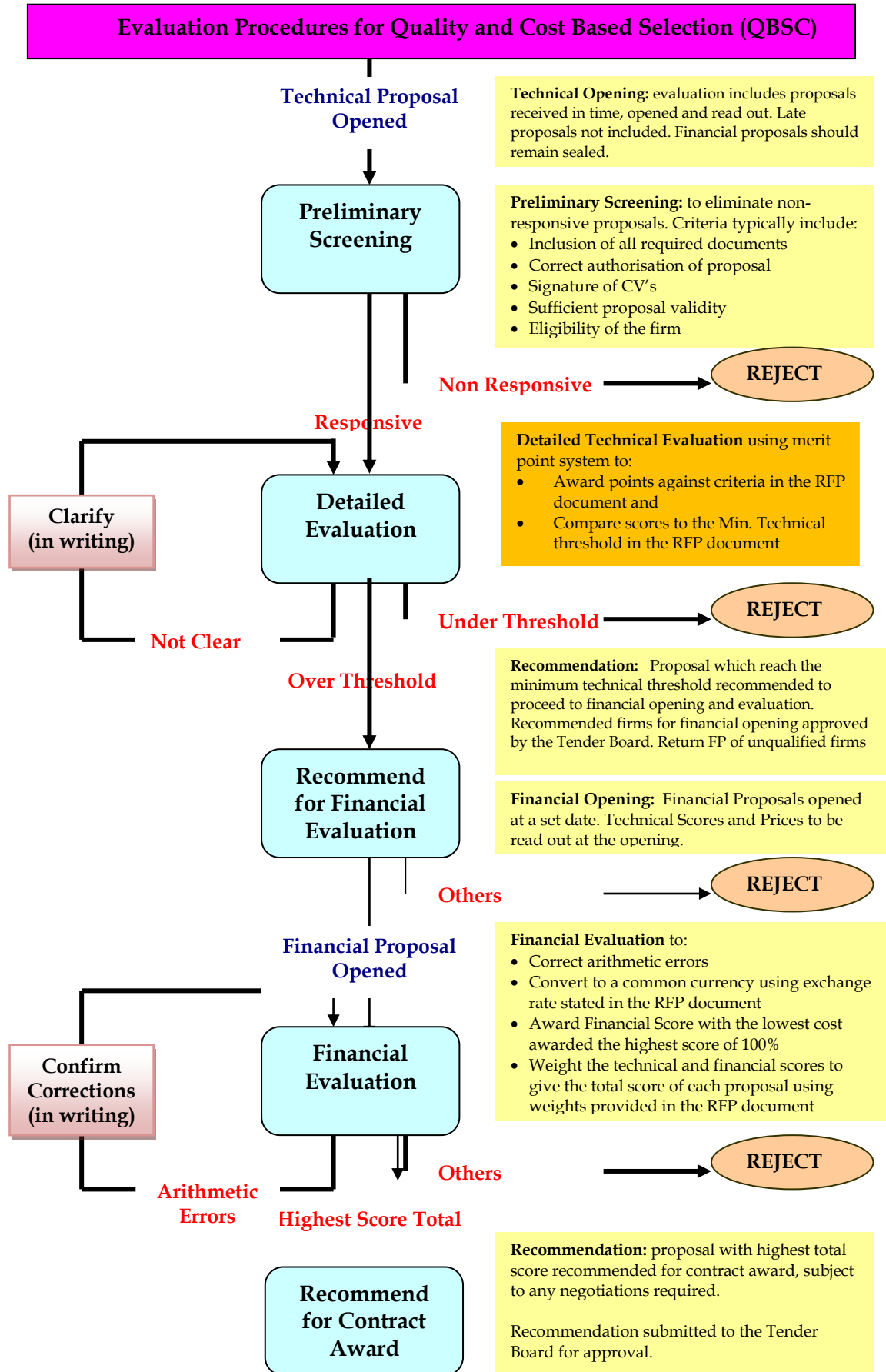


Figure 6.2 Evaluation Procedure for Consultancy Services (QCBS)

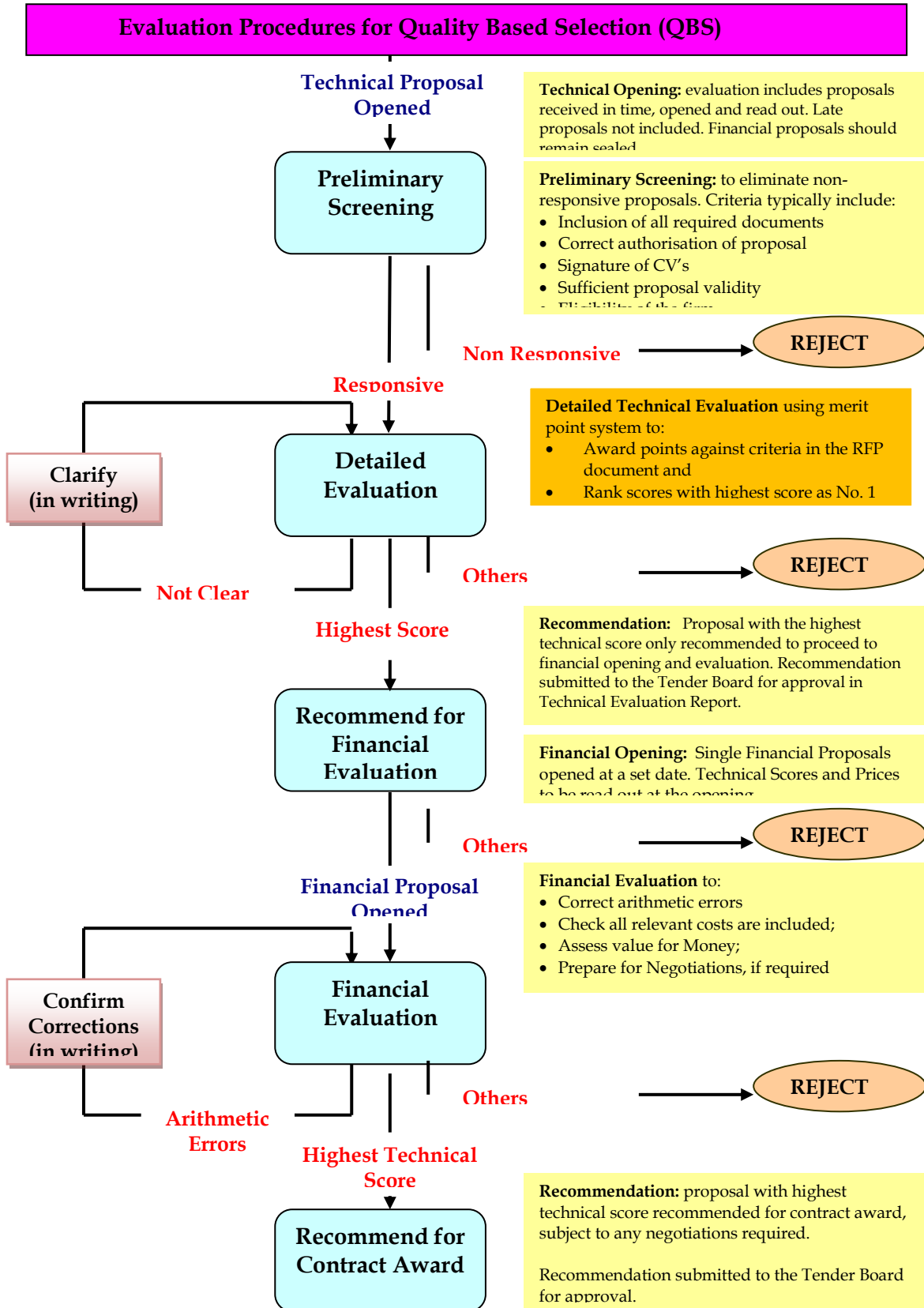


Figure 6.3 Evaluation Procedure for Consultancy Services (QBS)

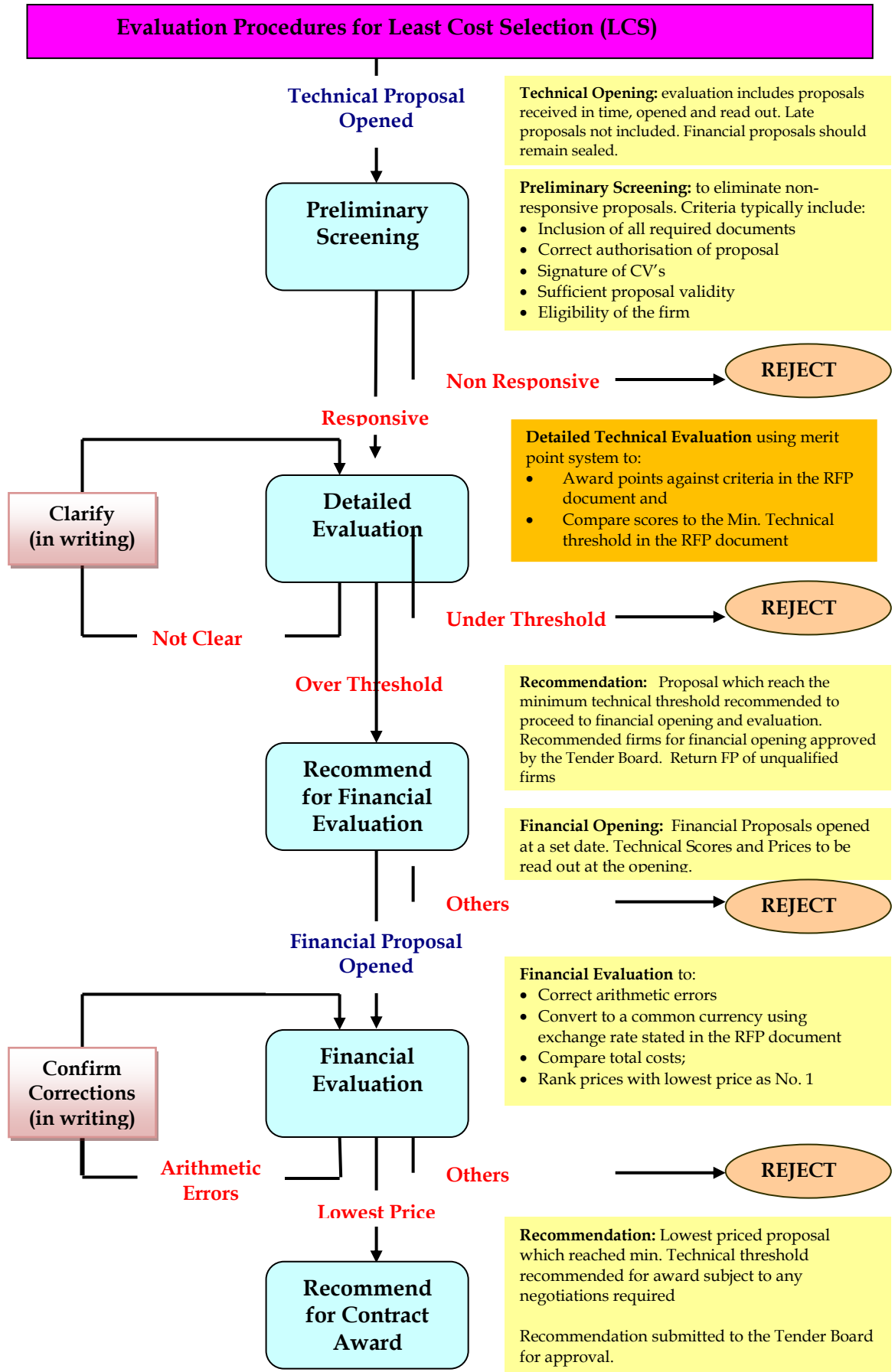


Figure 6.4: Evaluation Procedure for Consultancy Services (LCS)

7. MANAGEMENT OF PROCUREMENT CONTRACTS

7.1. Introduction

Contract administration is an important aspect in the procurement cycle which ensures that the PE gets what it procured. Unfortunately, it is a stage which is not given adequate attention during contract implementation thus causing unnecessary complaints of the parties to a contract.

PE puts in a lot of efforts in ensuring that they select a supplier or service provider who shall deliver the works, goods, services of the required quality, in a timely manner and within the agreed costs. The selection process is however, in some cases, not supported by a vigorous system which ensures that what was bought is indeed what is delivered.

7.2. Importance of Proper Contract Management

Contract administration or management involves those activities performed by PE after a contract has been awarded to determine how well the PE and the supplier or service provider performed to meet the requirements of the contract. It encompasses all dealings between the PE and the supplier or service provider from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the PE gets what it paid for.

There are three aspects to a contract that must be managed while the assignment is being carried out: time, cost and performance. Time and cost must be measured against the budget and projected time required to complete the contract to detect deviations from the plan. The performance of the contract must be checked to ensure that the targets are being met. Sound record keeping makes the management of the contract easier and more effective. Without complete records any possible disputes or claims may be difficult and very time consuming to sort out.

Good contract administration assures that the end users are satisfied with the product or service being obtained under the contract. It is absolutely essential that those entrusted with the duty to ensure that the PE gets all that it has bargained for must be competent in the practices of contract administration and aware of and faithful to the contents and limits of their delegation of authority from

7.3. Prerequisites of good contract management

Good contract management ensures that each party to a contract gets what it has bargained for. In order for this to happen, the following are important prerequisites:

- a) There has to be very clear terms on what must be accomplished by each party;
- b) Rights and obligations of each party must be defined very clearly;
- c) There must be a system in place of ascertaining that rights and obligations of each party have been accomplished; and
- d) There must be a system in place to handle disagreements.

- e) There must be a system in place for winding up the contract.

7.4. Legal Requirements for Contract Management

Management of contracts is an important aspect to ensure that a PE gets value for money and is addressed briefly in **GN. 446-R114** and in detail in **GN. 446- Part VIII** for goods, works and non-consultancy services, and in **GN.446-Part IX (g)** for consultancy services.

PEs obligation to ensure sound contract management is given in **GN. 446-R114** as shown in **Box 7.1** and specific actions to be undertaken are included in GN.446-Part VIII and GN. 446- Part IX (g). They can be summarized as follows:

Box 7.1: PEs General Obligation for Contract Management

114. A procuring entity shall be responsible for the effective management of any procurement of goods, services or works for which it is undertaking and shall-

- (a) monitor the costs and timely delivery of goods and services in the correct quantities and to the quality specified in each contract;
- (b) monitor the progress and timely completion of works in accordance with the terms of each contract;
- (c) take or initiate steps to correct or discipline deviations from observance of contract condition; and
- (d) ensure that the responsibilities imposed on it by the contract are fully discharged.

- General obligation to manage good contracts and obtain early warning in case of delay and institute liquidated damages in case of the actual delay – **GN. 446-R.242**;
- Management of Services and Works Contracts **GN. 446-R.243**–
 - ❑ Monitor progress against statement of requirements or schedule of works by means of daily, weekly and monthly reports;
 - ❑ Authorize payments by measurement and certification at intervals stated in the contract- remember deduction of retention money if provided
 - ❑ Inform the service provider where performance is not satisfactory that he is in breach of contract and in addition invoke procedures for instituting disputes prescribed in the contract.
 - ❑ If there is failure to provide services to the required standard withhold payments of retained money; and call for any performance security if such security has been furnished by the service provider.
 - ❑ Use of Contingency sum to cover variations under the contract; and Additional services or works considered necessary.
 - ❑ Only when works or services are completed and defects corrected to the satisfaction of PE should the final payment made and release of performance guarantee made.
 - ❑ Appointment of Works Supervisor **GN. 446-R.252** – normally a public officer, a unit responsible for works in PE or a Consultant- Manages the work of the inspection committee.
- Management of goods contracts (**GN. 446-R.244 to R.251**)–

- ❑ Ensure Inspection of goods and those below standard should be rejected. The costs of justified rejection of goods to be met by the supplier and this should be included in the contract –**GN. 446-R.244**
 - ❑ The obligation of the accounting officer to appoint an Inspection and Acceptance Committee for each tender including call off orders – **GN. 446-R.245**
 - ❑ Procedure for inspection and acceptance of goods by the Inspection and Acceptance Committee must be observed as covered under **GN. 446-R.246 to R.251**. Note that partial acceptance is permitted in the case of items which work independently but no partial acceptance shall be permitted for goods which are in a set or unit, and any missing component part of which would render the use incomplete or impossible – **GN. 446-R.249**.
 - ❑ Payment shall only be effected upon issuance of a goods acceptance certificate – **GN. 446-R.248**;
 - ❑ Disagreement amongst members of the goods inspection and acceptance committee shall be referred to the accounting officer for consideration and decision – **GN. 446-R.250**.
- Management of consultancy services contracts (**GN. 446-R.319 to R.322**)–
 - ❑ The provisions for Management of Services and Works Contracts in **GN. 446-R.243** are replicated in **GN. 446-R.319**.
 - ❑ Professional liability of consultants is covered under **GN. 446-R.321** in which applicable laws on professional liability shall apply unless parties wish to limit the liability but shall not be less than the total payments expected to be made under the consultant’s contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and the limitation shall be towards the PE only and not its liability towards third parties.
 - ❑ One aspect of management of consultancy contracts provided in the GN.446 2013 which need to be emphasized here is the issue of performance security. Many consultants like those using FIDIC White Book – Client/Consultant Model Services Agreement, 2006² are used to a system which does not require submission of bid or performance security. Reading **PPA 2011–S.58 (2)**, **GN. 446-R.29** together with the interpretation of a tenderer and services as given in **PPA 2011-S.3** it is implied that performance security is required for consultancy services in Tanzania. This has been further reinforced in **GN. 446-R.112** and **GN. 446-R.322 (2)** in which the maximum amount of liquidated damages for consultancy services is pegged on the amount of performance security.
 - ❑ There is likely to be an outcry from consultants arising out of the imposition of the requirement to submit performance security, but it is important to note that circumstances justifying the requirement of tenderers to submit bid security and performance security are applicable in works, goods, non-consultancy and consultancy services. The provision of bid security is

² Read FIDIC Commentary on Bid and Performance Security in <http://fidic.org/node/760>

intended to safeguard a PE from premature withdrawal of tenders by participating tenderers and performance security is intended to safeguard a PE from non-performance of the winning tenderer. The key questions to ask is can't consultants withdraw their bids before expiry of bid validity period? And cant Consultant's fail to perform under a given contract? If the answer is no then bid security or performance security is unjustified. If the answer is yes then bid security or performance security are justified unless other ways are introduced to safeguard PEs interest. Other procurement jurisdiction like that of Philippines also impose bid as well as performance security in consultancy assignments³. In Uganda a bid securing declaration is imposed on consultancy assignments and no performance security⁴. This is an area that GN.446A is required to issue guidelines very soon as required in **PPA 2011-S.58 (4)**.

Other Legal Provisions

Contracts Amendments and Extension of Time

Any amendments to a contract after signature must obtain the approval of the Tender Board and generally the PE shall have no power to authorize additions beyond the scope of the contract without the approval of Paymaster General or appropriate budget aGN.446oving authority for additional financial authority to meet the costs of such additions- **GN. 446 –R.110**. Changes in the scope of the contract include all changes in the quantity and quality of goods to be supplied, services to be provided or work to be performed by the tenderer who has been awarded the contract and these have been regarded as changes of policy nature. – **GN. 446-R.110 (6)**

Accounting Officer is the only person empowered to issue time extension orders, and the reasons for granting such orders are required to be documented in the contract implementation records. It is particularly emphasized not to request a tenderer to carry out further work on the contract after issuance of contract completion certificate. This is intended to safeguard PEs right to impose liquidated damage if there is delay of delivery of goods and services or completion of the works - **GN. 446-R.111**. If extra work is required it shall be arranged separately out of the original contract, possibly through the use of single source or direct contracting method.

Liquidated damages

The imposition of liquidated damages and the rates to be used are covered under **GN. 446-R.112** as being 0.10 to 0.20 percent in the case of procurement of goods and consultancy services, and 0.10 to 0.15 percent in the case of works of contract value per day of delay up to the maximum sum equivalent to the amount of performance guarantee. To be applicable they must be specified in the tender documents- **GN. 446–R.112**

On liquidated damages there is contradiction of what is provided under GN.446-R322 with what is provided under **GN. 446-R.112**. **GN. 446–R.322(2)** provides for imposition of

³ Read Pages 18 to 21 of Manual of Procedures for Procurement of Consulting Services issued by Government Procurement Policy Board of Philippines downloadable from <http://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.4.pdf>

⁴ Guideline Ref 3/2014 – Guideline on Bid and Performance Securities of 3rd March 2014 issued by Public Procurement and Disposal Authority of Uganda downloadable from http://www.ppda.go.ug/index.php/downloads/cat_view/11-guidelines/29-central-government.html

liquidated damages in an amount equal to one-tenth of one percent of the cost of unperformed portion for every day of delay, and in no case shall the sum of liquidated damages exceed ten percent of the performance security while **GN. 446-R.112 (2) (C)** provides for imposition of 0.10 up to 0.20 percent of contract value per day up to a sum equivalent to the amount of performance guarantee. This needs to be sorted out.

Termination for failure to implement the works or services

Failure by a tenderer to implement a contract within stipulated time or failure to comply with the contract or agreement without justifiable and acceptable reason may result into termination of a contract. Accounting Officers who terminate tenderers for failure to implement shall refer the matter to PPRA and Attorney General for information and appropriate action. PEs are prohibited to procure from such a tenderer unless an approval is granted by PPRA – **GN. 446-R.113**. It should be noted here that one of the possible actions that may be taken by PPRA against such tenderers is blacklisting in accordance with **PPA 2011-S.62 (3) (c)** and **GN. 446-R.93 (3) (c)**. Termination of contract for failure to perform need to be handled very carefully by ensuring that all contractual provision are properly adhered to.

Sometimes non-performance by the tenderer may be so severe to the extent that it is the political leader who orders such a termination. To me there is nothing wrong with who ordered the termination if it was justifiable. What is important is that once a political leader orders a termination, those responsible for managing the contract should follow the procedures provided in the contract to bring the contract to an end. Failure to do so may give the supplier or service provider a right to resist a termination which did not follow procedures.

7.5. Appointing a Contract Administrator/supervisor

GN. 446–R.243 and R.319 emphasizes on the need for each contract, A PE to monitor the performance of a supplier or service provider entrusted to implement a contract. It is usually advisable to appoint a person within the organisation to oversee the administration of a contract.

In selecting the person responsible for day-to-day contract administration, the following should be considered:

- where supervision needs to be conducted by a person with appropriate technical skills, such as for construction contracts or the installation of complex plant and machinery, contract administration is best allocated to the end user or an external consultant;
- where contract administration is likely to be time-consuming or require skills not available within the PE, an external contract administrator should be appointed, such as a project manager for a major construction contract;
- where goods are to be received and issued by stores, contract administration is best allocated to the stores staff;

- where goods are to be delivered directly to the end user, contract administration is best allocated to either the end user or procurement staff, although there may still be a need for the goods to be included in the PEs record of assets;
- where a consultant is required to work with the end user in conducting a study, providing advice or building capacity, contract administration is best allocated to the end user and particular counterpart staff may need to be designated to work with the consultant;

7.6. Contract Delivery follow-up

7.6.1 Contract Delivery Follow-up Defined

One important aspect of contract management is to follow up on the state of what has been bought after it has been delivered, to ensure that the PE is satisfied. The extent of the follow-up may vary depending on the contract value or the commodity involved. Responsible PEs staff should establish any expected delivery follow-up requirements at the time the contract is being set up. In many cases problems arise during implementation because mitigating measures were not taken into account during the preparation of the contract.

It is normally required to deal with reports of unsatisfactory delivery immediately. Decision must be made on a supplier or service provider who has not delivered goods or services of the expected quality or who has not delivered on time on whether it should be considered as in contract default and what steps should be taken.

Contract delivery follow-up is also responsible for dealing with supplier or service providers whose goods, during the warranty period, become defective or fail to meet contract requirements as a result of faulty manufacture, material or workmanship.

7.6.2 Contract File

In order to allow for effective contract delivery follow-up, the Contract manager is required to open and keep a contract file after the contract is signed. The contract file supersedes the procurement file which is used for the purpose of keeping all important records of the procurement process until a formal contract is entered.

It is important to appreciate that proper recording keeping is fundamental to contract administration. Therefore a contract file is used for recording all information regarding the actual performance of the requirements of the contract.

7.6.3 Contract Delivery Follow up for Goods

Contracts administration for goods focuses on ensuring that goods are delivered on time, that the goods are acceptable to the PE, in terms of quantity, quality and supporting documentation, and that the PE meets its obligations to pay for the goods delivered in a timely manner

For goods contracts, contract delivery follow up encompasses the following:

- ensuring that the actual dates when deliveries are due are agreed with the supplier, based on the date of contract effectiveness;
- expediting during the delivery period, to ensure that manufacturing, freight-forwarding and deliveries are proceeding on schedule;
- witnessing tests or approving samples, where required;
- arranging collection, freight-forwarding, customs clearance or delivery, where the PE is responsible for any of these tasks;
- arranging for receipt and inspection of the goods by the Inspection Committee
- checking all documentation relating to the goods, such as delivery notes, and ensuring that documentation is correct before signing;
- recording any missing, damaged or incorrect items and initiating claims against insurance policies or the supplier;
- reporting any contractual problems or requests for contract amendments;
- checking invoices and supporting documentation for payment are correct and arranging payment;
- managing payments to suppliers by ensuring payment is effected on time to avoid paying interest on delayed payments
- managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value when required, and releasing them promptly, when all obligations have been fulfilled;
- ensuring all documentation and information relating to warranties and warranty claims are in good order;
- ensuring that assets are registered and labelled, where required; and
- ensuring all user guides, manuals, licences etc are kept with the goods or in an appropriate place.

Goods should be recorded in the PE's asset records and issued to the end user in accordance with applicable stores and supply management procedures.

7.6.4 Contract Delivery Follow up for Works

Contracts administration for works is often complex and time-consuming, as it involves supervision of the progress of the works, ordering variations where unforeseen conditions are encountered and measuring the work completed for payment purposes. For major contracts, the PE will normally use a full-time supervising engineer or project manager, who will exercise control and supervision of the contract on behalf of the PE. Where a project manager is used, the PE must:

- ensure that the role of the project manager is clearly defined, in particular his powers to issue contract variations, which result in changes to the overall cost, completion date, quality and design of the works and to settle disputes;

- establish arrangements for keeping the PE informed of contract progress, variations issued and any disputes; and
- designate a contract administrator within the PE, who will be the contact point for the project manager.

In works contract delivery follow up encompasses the following:

- ensuring that the actual mobilisation and completion dates are agreed with the contractor, based on the date of contract effectiveness;
- monitoring the overall progress of the works and the performance of the project manager;
- reporting any contractual problems or requests for contract amendments to the PMU;
- checking invoices and supporting documentation for payment are correct and arranging payment;
- managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value when required, and releasing them promptly, when all obligations have been fulfilled;
- ensuring all final acceptance and hand-over arrangements are completed and documented satisfactorily; and
- ensuring all final drawings, manuals etc are received and kept in an appropriate place.

7.6.5 Contract Delivery Follow up for Services

Contracts administration for services focuses on ensuring that services are delivered on time and to an acceptable quality. This can be difficult, as the quality of services, particularly consultancy services, can be subjective and difficult to measure. A good working relationship with the Consultant and ongoing monitoring of services is therefore important, to ensure successful contract performance.

The PE must also ensure that it meets its obligations, particularly where the performance of consultancy services is dependent on certain inputs or information from the PE or where staff must be made available to benefit from capacity building initiatives.

For services contracts, contract delivery follow up encompasses the following:

- ensuring that the actual dates for mobilisation, key milestones or deliverables and completion are agreed with the supplier, based on the date of contract effectiveness;
- monitoring contract performance to ensure that levels of service are maintained and that deliverables are submitted or completed on time;
- ensuring that all required reports are submitted on time;
- ensuring that, where required, the PE provides written comments or approvals to deliverables or reports in a timely manner;

- ensuring that any resources, assistance or counterpart staff to be provided by the PE are made available at the appropriate time;
- checking invoices and supporting documentation for payment are correct and arranging payment;
- managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value when required, and releasing them promptly, when all obligations have been fulfilled;
- notifying the service provider in writing of any failings in performance or failure to meet targets; and
- ensuring all reports or deliverables are kept in an appropriate place and circulated or implemented as required

7.7. Contract Amendments

Contract amendments are used to change the original contract. The need for an amendment may be the result of more negotiations, changes in the original requirement, or the need to deal with something unforeseen. The contractor must agree with the amendment.

When there is a need to amend a contract because the quantity, time, cost or quality is different from the original requirement, PE's agreement must be obtained before asking the contractor to implement the amendment. Normally the format for an amendment follows the form of the original contract. The amendment should identify, by using complete clauses, any changes, additions or deletions. Any aspect of the contract which will be affected by the amendment must be identified and dealt with in the amendment.

The contents of a contract amendment will be determined by the reason for the amendment and the term or condition which is being amended. However, all contract amendments must include the following details:

- the reference number and date of the contract which is being amended and a brief description of the subject of the contract;
- the number of the contract amendment i.e. "Contract Amendment No 1, 2, 3 etc";
- the date of the contract amendment;
- a clear statement of the part of the contract which is being amended, including relevant clause or annex numbers;
- a clear statement of how the contract is amended e.g. "the completion period is hereby extended by one week, to give a revised completion period of thirteen weeks" or "the quantity for item 3 is hereby increased by two (2) to give a revised quantity of five (5)";
- where the contract price is being amended, a clear statement of the amount by which the contract is increased or decreased and the revised total contract price i.e. "the contract price is hereby increased by a sum of Tshs 500,000 giving a revised total contract price of Tshs 3,500,000";

- a statement that all other terms and conditions of the contract remain unchanged.

7.8. Contract Closeout

7.8.1 Contract Closeout Defined

A completed contract is one that is both physically and administratively complete. A contract is *physically complete* only after all deliverable items and services called for under the contract have been delivered and accepted by the grantee. These deliverable items include such things as reports, spare parts, warranty documents, and proof of insurance (where required by the contract terms). These deliverable items may or may not have been priced as discrete pay items in the contract, but they are required deliverables, and the contract is not physically complete until all deliverables are made. A contract is *administratively complete* when all payments have been made and all administrative actions accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

Contract close out is a part of contract administration and therefore has the same purpose: to “...ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” Like contract administration, the extent of the effort involved in contract close out varies widely with contract type and the type of product or service procured. Therefore, there is no single procedure that can be used for the full range of contract types and products procured. Essentially it is a review and documentation of the fulfillment of all contract requirements.

Contract close out is quite simple with respect to a firm-fixed-price, off-the-shelf supply contract where the file contains documentation that the end product has been received, inspected and accepted and that full payment has been made. The process is more complex when large contracts containing progress payments, partial deliveries and many change orders are involved. However, the end objective is the same; to determine if the contractor fulfilled all requirements of the contract and if the PE fulfilled its obligations.

7.8.2 Contract Completion Checklist

Before closing a procurement file, the PMU should check that:

- all goods have been delivered, works completed and handed-over, services performed and contract deliverables received;
- there are no outstanding claims for missing or damaged items against either the supplier or an insurance company;
- all necessary payments have been made;
- the total payment total is correct, taking into account any contract amendments, variations, price variations and the amortisation of any advance payment;
- all guarantees and securities have been returned; and
- all necessary documentation is in place and correct.

7.8.3 Terminating a Contract

Generally it is not desirable to terminate an ongoing contract and it should normally be a last resort to a PE when things are not working well as planned. The grounds for termination of a contract will depend on the terms and conditions of the individual contract concerned. The following notes provide guidance on typical grounds for termination of a contract, but it is essential that a PE should be guided by the contract document itself:

- **Termination for convenience:** most contracts include a condition which enables the PE to terminate the contract for its own convenience, without there having been any default by the supplier. Where the PE terminates for its own convenience, it must make payment for all goods, works or services satisfactorily completed prior to termination and any other expenses incurred by the supplier.
- **Termination for default:** most contracts include a condition which enables the PE to terminate the contract, where the supplier has failed to perform its obligations under the contract or to comply with an agreement reached through arbitration or other dispute resolution mechanism. The contract will often specify a procedure by which the PE must formally notify the supplier of the default and give them time to correct the default, before actually terminating the contract. Where the PE terminates because of the supplier defaulting, it is normally permitted to procure the goods, works or services from another source and charge the original supplier for any additional costs incurred.
- **Termination for corrupt practices:** most contracts include a condition which enables the PE to terminate the contract, where the supplier has engaged in corrupt or fraudulent practices in competing for or implementing the contract. As with termination for default, the PE is normally permitted to procure the goods, works or services from another source and charge the original supplier for any additional costs incurred.
- **Termination for insolvency:** most contracts include a condition which enables the PE to terminate the contract, where the supplier has become bankrupt or insolvent. In such cases, there is normally no compensation to the supplier.
- **Termination for force majeure:** most contracts include a condition which enables the PE to terminate the contract, where the supplier has been unable to perform the contract for a specified period of time, due to an event of force majeure. In such cases, the PE must normally make payment for all goods, works or services satisfactorily completed prior to termination and any other expenses incurred by the supplier.

The PE should note that a contract will also give the supplier grounds for termination, which normally include failure by the PE to make payments which are overdue by a specified period of time, force majeure or failure of the PE to comply with an agreement reached through arbitration or other dispute resolution mechanism.

Internal Auditors, as part of their audit work, should ensure that a PE has managed the procurement contract in accordance with the law. This should be checked against the requirement of **CPI 4- Appropriateness of Contract Implementation shown in Annex 1**

8. PROCUREMENT RECORDS KEEPING

8.1. The Need for Records Keeping

Records mean a thing constituting a piece of evidence about the past, especially an account kept in writing or some other permanent form. In a broader form records means recorded information regardless of form or medium created, received and maintained by any institution or individual in the pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business. Records provide evidence of decisions and actions taken as part of the execution or support of procurement activities.

According to ISO – 15489-1, Records Management is a field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records. The purpose of procurement records management is to enhance accountability, transparency and efficiency in the execution and support of the PE's procurement activities, to protect the PE's operational, legal and financial interests, and to preserve and manage PE's knowledge and memory.

8.2. Importance of Records

Organization's ability to function effectively and give account of its actions will be undermined if sound records management principles are not applied. Procurement records play a significant role as evidence of purchases of goods and services. Unorganized or otherwise poorly managed records mean that an organization does not have ready access to authoritative information, to support sound decision making or delivery of programs and services.

Sound records management is a critical component for good governance, effective and efficient administration, transparency, accountability and delivery of quality services to the citizens.

All of the elements for effective procurement process depend upon an effective records management infrastructure. Without a records management infrastructure, PEs are incapable of effectively managing current operations, and have no ability to use the experience of the past for guidance. Records are inextricably entwined with increased transparency, accountability and good governance in the procurement process.

Without records:

- There can be no rule of law and no accountability.
- Officials are forced to take decisions on an ad hoc basis without the benefit of an institutional memory.
- Fraud cannot be proven and meaningful audits cannot be carried out,
- PEs procurement actions are not open to review.

- The effectiveness of development projects must suffer as there will be no means of verifying that funds earmarked for development are used as intended.

Lack of records management is directly linked to the persistence of corruption and fraud. Experts in procurement recognize that well-managed record systems are vital to the success of most anti-corruption strategies. Records provide verifiable evidence of fraud and can lead investigators to the root of corruption. Well-managed records can act as a cost effective restraint.

8.3. Procurement Records Management

The overall goal of procurement records management is to make the public procurement process more transparent to ensure accountability and to reduce wastage of public resources. The PPA 2011 and GN. 446 requires PEs to manage procurement records properly and effectively.

Among the challenges faced by PEs is a major weakness in procurement records management. In most PEs management of procurement records PEs is not given enough attention in terms of resource allocation, personnel, equipment, space and accommodation. It is important that management of procurement records should be mainstreamed and integrated with the overall records and information management function in the PEs.

Some of the indicators of failure to manage procurement records effectively by PEs include the following:

- Non-maintenance of an accurate, comprehensive and complete file for each procurement;
- Non-compliance with the regulatory and legal requirements for records management;
- Existence of a huge backlog of unfilled procurement documents;
- Absence of record keeping policy and regulations;
- Non-assignment of procurement records keeping responsibility to a specific officer or office;
- Officers keeping official records in personal folders, and desks;
- Absence of co-ordination of management of records in entities;
- Disorganized storage of and inadequate accommodation for closed records;
- Mixing of active records with the closed ones which impedes access and retrieval;
- Absence of an official filing scheme and failure to update where the file scheme is available for records;
- Inadequate accommodation and security safeguards for records;
- Lack of senior management support and commitment to records management services which leads to low ranking of records services;

- Fragmentation of procurement records, where different documents pertaining to a single procurement activity are kept by different offices, such as accounts, registry, and stores section;
- Existence of different versions of the same information and the absence of a definitive or authentic version;
- Unauthorized access to, alteration or destruction of records;
- Inability to locate and retrieve needed document due to disorganized storage;
- Absence of reliable records control systems;
- High incidence of lost and missing files which necessitates opening of many temporary files;
- Inadequate and weak file movement control procedures;
- Unqualified staff in charge of records;
- Huge backlogs of closed and unorganized files ; and
- Inappropriate, dilapidated and inadequate filing equipment.

A well-structured record keeping system is a key component for effective and efficient delivery of services and a foundation of accountable and transparent administration. It is important to have procedures and control systems to ensure that complete, accurate and comprehensive records are created and maintained, that records can easily be located and retrieved when needed, that records are not destroyed when still required and, most importantly, that responsibility for the records management function is assigned.

8.4. Procurement Records to be Kept

PPA 2011 – S.61 requires a PE to maintain procurement records for a period of not less than five years from the date of completion of the contract. The kept records must be made available when required by the Minister of Finance and CAG.

Refer PPA 2011-S.61 and GN. 446-R.10 & R.15 on Records to be kept by PE.

The requirement of records keeping is further emphasized by GN. 446-R.10 (1) & (2) so as to ensure transparency and fairness. Further GN.446-R.15 gives a list of records that can be kept and how such records can be shared. These include description of goods or services, the procurement process/method adopted, names of all participating firms, the evaluation process and the contract award process.

For the purpose of keeping procurement and contract management records, a PE is required to open a procurement file and a contract file respectively.

The Procurement file is important in the management of a procurement contract. The file is opened for the purpose of processing the procurement before the contract is awarded. It contains the following.

- Procurement initiation requisition.
- All correspondence on the procurement.

- Bid document
- Bids received.
- Evaluation and award of the contract.
- Information on the award of the contract and particulars of the contract.

The contract file shall be opened after the procurement contract is signed and it shall be opened by the contract manager. The file shall be used for recording the actual performance of the requirements indicated in the contract. The file should contain the following:

- Signed original procurement contract.
- Any signed modifications to the contract.
- Contract correspondence between the parties.
- Information on the performance.
- Correspondence on the contract.
- Management progress reports
- Minutes of meetings of project team
- Payment records and close up documents.
- Copy of performance security (where required)
- Any other relevant information.

PPRA has prepared a guide of records to be maintained in the procurement and contract file as shown in **Annex 7**.

8.5. Accountability for Procurement Records Management

There are many users of procurement records including the Procurement Management Unit, User Departments, Financial Auditors, Procurement Auditors and other authorized persons. However, the accountability for procurement records falls under the following:

Accounting Officer

Head of the PE is required under PPA 2011-S.48 to ensure that his PE complies with the Act, the Regulations and any directions of PPRA. This implies that he is required to ensure that requirements with regard to keeping procurement records as provided in PPA 2011-S.61 and GN. 446-R.15 are complied with.

Head of Procurement Management Unit

The Head of Procurement Unit is responsible for the overall management of procurement records of the PE. PPA 2011-S.38 (l) requires the Head of PMU to ensure that he keeps procurement records

User Department

User Department is responsible for the overall management of contract records as per PPA 2011-S39 (1) (i).

8.6. Records Retention and Disposal Scheduling

Effective records management requires controlling records throughout their life cycle of creation, use, maintenance, review, appraisal, preservation and disposal. It is important to plan the actions to be taken on records at various stages in their life in order to avoid their uncontrolled accumulation and consequently taking up valuable office space. A records retention and disposal schedule is a policy document that prescribes the retention periods for specified categories of records and the applicable disposal action. The objectives of a records retention and disposal schedule are:

- To facilitate identification and selection and retention of records needed for conduct of business;
- To minimize requirements for filing equipment and space, as the records that are not needed for current operations will be removed from the office for storage in a departmental records room or the national archives; and
- To facilitate identification and procedural destruction of records those are judged to be of no further fiscal or administrative value.

A records retention and disposal schedule should be as comprehensive as possible and cover all the records of a Procuring Entity. According to PPA 2011-S.61 the procurement records must be retained for period not less five years from the date of completion of a contract.

Internal Auditors, as part of their audit work, should ensure that a PE has maintained procurement and contract management records in accordance with the requirement of the Law. This should be checked against the requirement of CPI 5 - Records Keeping shown in Annex 1

ANNEX 1: Compliance and Performance Indicators used by PPRA

COMPLIANCE INDICATORS	Sub CPI Score	Max Score	
1. Institutional Set up and Performance			
1.1 Institutional set up		10%	
1.1.1 Properly established Tender Board	2%		
1.1.2 Knowledge of PPA and PPR for members of TB	2%		
1.1.3 Establishment of procurement Management Unit	2%		
1.1.4 Knowledge of PPA and PPR for members of PMU	2%		
1.1.5 Existence of Internal Audit Unit	1%		
1.1.6 Knowledge of PPA and PPR for staff in the Internal Audit Unit (IAU)	1%		
1.2 Compliance of organs to their stipulated powers and responsibilities		5%	
1.2.1 Accounting Officer exercise all his powers and observes independence	1%		
1.2.2 Tender Board Performs all its responsibilities and observes independence	1%		
1.2.3 PMU performs all its responses and observes independence	1%		
1.2.4 User Departments performs all their responsibilities and observe independence	1%		
1.2.5 IAU performs its procurement audit responsibilities and observes independence	1%		
Score under Institutional Set up and Performance		15%	
2. Appropriate preparation and implementation of Annual Procurement Plan (APP)			
2.1 Properly prepared APP		9%	
2.1.1 Used appropriate PPRA'S templates	1%		
2.1.2 Used appropriate tender numbering as per PPRA's guidelines	1%		
2.1.3 Tender procession time allocated properly	2%		
2.1.4 Proper aggregation of requirements	2%		
2.1.5 Proper arrangement of TB/committees meetings	1%		
2.2 The APP approved by relevant authority	1%		
2.3 G.P.N advertised to the public	1%		
2.4 APP implemented properly		6%	
2.4.1 App adhered to (Unless there are acceptable justifications)	2%		
2.4.2 Efficiency in implementing the APP			
2.4.2.1 From submission of requirements by User Department to Tender Advertisement	1.5%		
2.4.2.2 From tender opening to contract signing	2.5%		
Score under Appropriate preparation and implementation of APP		15%	
3. Appropriateness of the Tender Process			
3.1 Properly prepared tender documents	3%		
3.1.1 Used Standard Tender Documents issued by PPRA			
3.1.2 Arrangement and completeness (contain all tender documents)			
3.1.3 Neutral specification/ToR			
3.1.4 Unambiguous evaluation criteria			
3.1.5 Properly filled tender/contract data sheet			
3.2 Appropriate methods of procurement	2%		
3.3 Public advertisement of bid opportunities	2%		
3.4 Adequate time for preparation of bids	2%		
3.5 Submission of tender adverts to PPRA	2%		

COMPLIANCE INDICATORS		Sub CPI Score	Max Score	
3.6	Tenders properly received and opened	2%		
3.7	Proper evaluation of bids		3%	
3.7.1	Evaluation team properly appointed	1%		
3.7.2	Evaluated by using criteria explicitly stated in the tender documents	1%		
3.7.3	Evaluation report contain all necessary attachments	1%		
3.8	Tenders received appropriate approvals		3%	
3.8.1	Approval to start the procurement process	0.5%		
3.8.2	Approval of advert and tender document	0.5%		
3.8.3	Approval of shortlist of suppliers/contractors	0.5%		
3.8.4	Approval of negotiation plan and team	0.5%		
3.8.5	Approval on recommendation for award	0.5%		
3.8.6	Approval of variation orders/contract amendments	0.5%		
3.9	Proper communication of awards	3%		
3.10	Contract awarded within the tender validity period	2%		
3.11	Publication of awards	2%		
3.12	Notification of unsuccessful bidders	2%		
3.13	Submission of contract completion reports to PPRA	2%		
Score under Appropriateness of the Tender Process			30%	
4. Appropriateness of contract implementation				
4.1	Arrangement and completeness of contract documents	2%		
4.2	Proper signing of contracts	2%		
4.3	Appropriate management of general contracts administration issues		3%	
4.3.1	Existence of project/contract managers	0.75%		
4.3.2	Appropriate management of performance securities, insurances, warranties	0.75%		
4.3.3	Timely issuance of instructions	0.75%		
4.3.4	Management meetings are held	0.75%		
4.4	Appropriate management of time control issues		3%	
4.4.1	Appropriate extension of contract duration	0.50%		
4.4.2	Appropriate application of remedies for delays	0.50%		
4.4.3	Timeliness of site possession	0.50%		
4.4.4	Quality of the project programme	0.50%		
4.4.5	Adherence to project programme	0.50%		
4.4.6	Progress reports are prepared			
4.5	Appropriate management of quality control issues		4%	
4.5.1	Availability and quality of specifications	0.67%		
4.5.2	Appointment of inspection and acceptance committees	0.67%		
4.5.3	Appropriate composition of inspection committees	0.67%		
4.5.4	Availability and quality of inspection reports	0.67%		
4.5.5	Availability of quality assurance plan	0.67%		
4.5.6	Adherence to quality assurance plan	0.67%		
4.6	Appropriate management of scope control issues		3%	
4.6.1	Are there justifications for variations	1.5%		
4.6.2	Appropriate procedures followed in issuing variation orders	1.5%		

COMPLIANCE INDICATORS		Sub CPI Score	Max Score	
4.7 Appropriate management of cost control issues				
4.7.1 Payments made on time		1%		
4.7.2 Payment certificates are attached with inspection reports/measurement sheets		1%		
4.7.3 Claims are paid justifiably and after getting necessary approvals		1%		
Score under Appropriateness of contract implementation			20%	
5. Records keeping				
5.1 Availability of complete records		4%		
5.2 Proper arrangement of records		2%		
5.3 Proper location of records		2%		
5.4 Availability of adequate space		1%		
5.5 Availability of adequate facilities		1%		
Score under Records keeping			10%	
6. Implementation of systems prepared by PPRA (PMIS/CMS)				
6.1 Submission of APP		2%		
6.2 Submission of complete checklist		2%		
6.3 Submission of monthly procurement reports		2%		
6.4 Submission of quarterly procurement reports		2%		
6.5 Submission of annual procurement reports		2%		
Score under Implementation of systems prepared by PPRA (PMIS/CMS)			10%	
7. Handling of complaints				
7.1 Improper handling of complaints				
Score under handling of complaints			-10%	
Overall score on Compliance and Performance Indicators (CPI)				

ANNEX 2: Value for Money Audit Tool used by PPRA

		Agency: Project: Contract Number: Supervising Architect: Contractor: Audit Date:		Contract Price: Time Elapsed Contract Period: Site Possession Date Commencement Date: Completion Date: Revised Completion Date					
NO.	ASPECT	Requirements by Act	Audit Checklist	Poor	Fair	Good	INA	AVERAGE SCORE	REMARKS
Assess all project implementation aspects listed under stages A1-A4 below and rate them as poor , fair or good . If the aspect lacks the required information, its evaluation score should be zero (under "INA" column)									
A	Planning, Design and Tender Documentation								
1	Is the project in the approved budget	Reg. 75 of GN No. 446 requires PEs to ensure funds are allocated before commencing procurement proceedings.	Establish whether the project was in the approved budget	1	2	3	0		
2	Is the project in the annual procurement plan (APP)	Reg. 69(2) & (7) of GN No. 446 requires PEs to take a strategic decision whether or not the most economic and efficient procurement can best be achieved and ensure procurement plan contains those projects for which sufficient funds have been committed	Establish whether the project was in the APP						
3	Is the procurement initiated by the user dept	Section 39(b), PPA 2011 requires UDs to initiate procurement and disposal by tender requirements and forward them to the PMU	Establish who has initiated the procurement, establish whether the procurement was timely initiated, establish whether standard procedural forms by PPRA were used						
4	Compliance of project planning, particularly with respect to:	Regulation 69(1) PPA 2013 requires PEs to initiate procurement planning at design stage	Assessment of competing alternatives based on updated building software						
	To establish the adequacy of the design								

						Assess whether the feasibility study report was thoroughly prepared							
						Determine whether an independent design professional or consultant was timely appointed.							
5	Timely appointment of independent design professional or Consultant	Regulation 69(1) PPA 2013 requires PEs to initiate procurement planning at design stage	Regulation 69(2) PPA 2013 requires PEs to take strategic decisions in terms of efficiency and economy			Was the pre-tender estimates prepared? Was the estimate accurately prepared?							
6	Accuracy and completeness of design and calculations-geotech survey report (for high rise buildings)	PMU to recommend technical input submitted by user departments as provided under Sec. 39(a&f) of PPA, 2011.				Was the designs prepared? Did the foundation design base on geotech survey? Is the Engineering design accurate and complete? were Architectural drawings accurately prepared?							
7	Accuracy, appropriateness and completeness of technical specifications	Regulation 69(4) PPA 2013 requires PEs to forecast its estimate	Regulation 69(4) PPA 2013 requires PEs to forecast its estimate			Was the designs and calculations adequate ?							
8	Overall appropriateness of the design in terms of economy and function (fitness for	Regulation 69(3) PPA 2013 requires PEs to forecast its requirements	Regulation 69(3) PPA 2013 requires PEs to forecast its requirements			Was the bills of quantities prepared? Was the bills of quantities accurately prepared in relation to drawings? Were specs accurately prepared?							
9	Accuracy and completeness of BOQs for the works and their consistency with the drawings and technical specifications	Regulation 69(5) PPA 2013 requires PEs to forecast its estimate	Regulation 69(5) PPA 2013 requires PEs to forecast its estimate			Is the Cost Estimates (BoQ) consistent with drawings and specs?							
10	Accuracy of the Cost Estimates with respect to the Design	Regulation 69(2) PPA 2013 requires PEs to take strategic decisions in terms of efficiency and economy	Regulation 69(2) PPA 2013 requires PEs to take strategic decisions in terms of efficiency and economy			Establish who has approved the procurement Was the procurement timely approved?							
11	Approval to proceed with procurement	PMU to recommend submitted by user departments as provided under Sec. 39(a&f) of PPA, 2011.	PMU to recommend submitted by user departments as provided under Sec. 39(a&f) of PPA, 2011.			Establish whether the procurement in question's funds availability were confirmed by the AO							
12	Confirmation of funding by the AO	All procurement activities of the PE to be approved and fund availability committed by the AO as provided under Sec. 36(1d&g) of PPA, 2011.	All procurement activities of the PE to be approved and fund availability committed by the AO as provided under Sec. 36(1d&g) of PPA, 2011.			Were the tender documents complete? Were the tender documents sections properly arranged?							
13	Accuracy and completeness of tender documents	The tender document should be arranged and completed with all content as required under Section 70 of PPA and Regulation 184 of GN No. 446 of 2013	The tender document should be arranged and completed with all content as required under Section 70 of PPA and Regulation 184 of GN No. 446 of 2013			Indicate the date when tender documents were approved by the TB							
14	Tender Board Approval of tender documents before issuance	The tender document should be approved by the TB as required under Section 33(c) of PPA	The tender document should be approved by the TB as required under Section 33(c) of PPA										
	Average Performance: Planning, Design and Tender Documentation											#DIV/0!	#DIV/0!

B Procurement Stage								
1	Appropriateness of the method of procurement	Procuring entity engaging in the procurement of works shall apply procurement methods as prescribed in Part VI of PPA, 2011 and Part V, Seventh schedule, part IX and Eleventh schedule of GN No. 446 of 2013	Was the selected method of procurement appropriate?					
2	Compliance of the procurement process - Use of standard tender and contract documents - The tender notice	Reg. 108 of GN. No. 446 requires PEs to use standard tender documents issued by PPRA The invitation to tenders shall be issued as per section 68 (1) PPA 2013	Were tender documents prepared? Are standard tender documents used issued by PPRA used? Was the invitation to tender properly issued? Indicate the date when the advert was approved by the TB was the advert free from discriminating criteria?					
	- The selection of method of procurement	Section 64, PPA 2011 requires Procuring Entities to use competitive procurement methods	Was the procurement method shown in the APP? establish whether thresholds of application were adhered to for each selected procurement method					
	- Prequalification and shortlisting	(Section 52(1) of PPA, 2011 allows procuring entities where applicable to engage in pre-qualification proceedings with a view to identify tenderers prior to inviting tenders	Was the prequalification of tenderers process properly carried out?					
	Approval of pre-qualification and shortlist	The list of Contractors shall be approved by the appropriate tender board in accordance with Reg. 122(4) and 281 of GN No. 446 of 2013	Was the shortlist of Contractors approved by the TB? Indicate the date when the shortlist was approved by the TB					
	- Adequate Time for preparation of bids	Tenders shall be given sufficient time to prepare their response as required under Sec 68 (3, 4 & 5) of PPA, 2011 and eighth schedule of GN No 446 of 2013	Were the tender documents timely issued ? Were the tenderers given appropriate time for preparation of tenders?					
	- Adequate tender security or bid securing declaration	Tenders shall be sufficiently covered with appropriate tender security/ securing declaration as required under Sec 58 (1) of PPA, 2011, GN No 446 of 2013.	Was each tender submitted with relevant security?					

	Tender data sheet and special conditions of contract appropriate and duly filled	Tender data sheet/ special conditions of contract should be filled accordingly and accommodate changes in tender document as required by Section 68(5) of PPA, 2011 and Regulation 184(4) of GN No. 446 of 2013	Was the Tender data sheet / special conditions of contract appropriate and duly filled? Determine any ambiguity in the tender data sheet/ special conditions of contract						
	- Communication of clarification to bidders	Tenderers requesting for clarification of the solicitation documents from PE (provided the request is within appropriate time before the deadline for submission) should be replied in writing and copied to all bidders without identifying the source of query as required by Regulation 13 of GN No. 446 of 2013	Was there any request for clarification? Was the clarification timely communicated to all bidders?						
3	Evaluation process and award of contract - Evaluation criteria clearly stated and fair to all tenderers	The basis for tender evaluation and selection of the lowest evaluated tender shall be clearly specified in the instructions to tenderers or in the specifications to the works as required under Section 72 of PPA, 2011 and Reg. 202 (3,4 &5), 203 and 204 of GN. No. 446 of 2013.	Analyze the evaluation criteria provided in the tender documents and assess whether they are ambiguous						
	- Composition of tender evaluation committee	Properly appointed Evaluation team in accordance with the Section 40 of PPA, 2011 and Regulation 202 (1 & 2) and 297(1 & 2) of GN No. 446 of 2013	Was the evaluation team members proposed by PMU and approved by the AOC? Were evaluation team members' expertise and have experience adequate in relation to value and complexity of the tender?						
	members of evaluation committee signed co	Members of Evaluation Team should sign code conduct/ personal covenant forms before the start of evaluation of bids as per Sec. 40(6) of PPA, 2011	Were personal covenant forms/ codes of ethics signed before the start of the evaluation exercise?						
	- Evaluation done as per the evaluation criteria contained in the tender dossier or Request for Proposal	The PE shall evaluate the tender using the criteria explicitly stated in the bidding document as required under Section 74 of PPA, 2011 and Reg. 202 (3 & 4), 203, 297 and 299 of GN No. 446 of 2013.	Were tenders evaluated strictly based on the criteria contained in the tender documents? Were there any deviations in the specified criteria?						
	- All Evaluation Committee members sign the Evaluation report	Each evaluation report should be signed by the EC	Was the evaluation report signed by all members of the evaluation team?						
	- Rejection of all bids, if any, supported with evidence and procedures followed	Rejection of tenders shall adhere to conditions laid under Section 59 of PPA, 2011	Was the rejection of tenders justifiable? Were procedures for rejection of tenders followed appropriately ?						

4	<p>- Notification of evaluation results</p> <p>- Publication of awards [Regulations 236] of GN. No. 446</p>	<p>bidders who participated in the tender should be issued with the intention of award of tenders as provided under Reg. 231 GN 446 of 2013 (for LGAs conditions under Section 60(3&4) of PPA,2011 should be fulfilled)</p>	<p>Were unsuccessful bidders notification appropriate?</p> <p>Was the notification of the results given to the AO within three days after award decision of the TB? Were bidders given a cool off period of 14days to submit complaints?</p>				
		<p>the results of tenders should be published in the Journal and Tenders Portal on regular basis as required under Reg. 236</p>	<p>was the results of tenders published? Were the results published in the Journal and Tenders Portal ?</p>				
	<p>Quality and comprehensiveness of the tender evaluation report</p>	<p>The evaluation report shall contain as required under Reg. 199(3) of GN No. 446 of 2013.</p>	<p>Was the evaluation report prepared? Is the quality of tender evaluation report complete and free from errors? Does the evaluation contain all attachments?</p>				
4	<p>Negotiations process</p>						
	<p>- Approval of Negotiation Team and Plan</p>	<p>for each tender there should be a negotiation team/negotiation plan as required under Section 76,PPA 2011, Reg. 226,227 of GN. 446</p>	<p>Was the negotiation team appointed? Was the negotiation plan prepared? Was the negotiation plan approved by the TB? Indicate the date for TB approval</p>				
	<p>Approval of Minutes and Recommendations of the Negotiation team</p>	<p>The TB approved negotiation minutes and approved recommendation for award to the bidder as required under Reg. 228 of GN. 446</p>	<p>Were the minutes of negotiation approved by the TB? Indicate the date for TB approval</p>				
	<p>Incorporation of Approved Negotiation Minutes in the Contract Agreement,</p>	<p>The approved negotiation minutes should be incorporated in the Contract agreement as required under Reg. 229, 2013</p>	<p>Were the minutes of negotiation incorporated in the Contract document?</p>				
5	<p>Vetting of Draft Contract by the Attorney General/or Ratification by legal Officer</p>	<p>Draft Contract vetted by the Attorney General/or Ratification by legal Officer Reg. 59(1) & Reg. 60(1)</p>	<p>Were the draft contract documents sent to the AG/ legal Officer for ratification ? Were the comments of the legal officer incorporated in to the documents?</p>				
	<p>-Accuracy and completeness of contract documents</p>	<p>Contract document is prepared by PMU as per Sec. 38(j) of PPA, 2011 and approved by the TB as per Sec. 33(c) of PPA, 2011 and Sec. 55(2) of GN. No. 446 of 2013.</p>	<p>Was the contract document prepared? Was the contract document approved by the TB?</p>				
6	<p>Contracts awarded within the tender validity period</p>	<p>Contract should be awarded before the expiration of validity period as required under Reg. 62, 192 and 232(2) of GN. No. 446 of 2013</p>	<p>Were tenders awarded before the expiry of tender validity period?</p>				

7	Process for tender rejection	Sec. 59 of PPA 2011 and Reg. 16(1&2) of GN No. 446 of 2013 provides circumstances to which Procuring Entities may reject all tenders or all proposals taking into account that relevant justification are provided. The Accounting Officer is required to apply for the approval of the Authority prior to rejecting all tenders pursuant to Reg. 16(3) of GN No 46 of 2013.	If there was any tender rejected by the Procuring entity and if justification for such rejection were provided The application for the approval of rejection of Tender was made by the Accounting Officer to the Authority (PPRA) and granted with approval.						
8	Competitiveness of rates quoted for major items of construction when compared with prevailing market prices	Quoted rates for major items of work should be compared with prevailing market prices to note their competitiveness	Were unit rates normal? Were unit rates averagely prepared? Were unit rates above normal?						
9	Overall competitiveness of the most economic tender when compared with prevailing market prices in both private	Compare the overall competitive of tender in question with prevailing market prices both public and public sectors	Is the tender in question abnormally low, moderate or high?						
10	Capacity and competence of the selected contractor in relation to project size and complexity	The competence of the selected contractor as per the requirements under Reg. 224 of GN No. 446 of 2013.	Was the post qualification conducted to authenticate the capacity of the Contractor? Analyze the competence in relation to existing personnel, plants and equipments and financial soundness.						
Average Performance: Procurement Stage									
C Construction Stage									
1	Timeliness of site possession	Timely site possession in accordance to the terms and conditions of the contract	Was the contractor given full access to site as per the provisions in the contract documents and relevant correspondence? Determine if the contractor was not given full access to site until the PE becomes liable (time extension with or without cost) as per the provisions of the contract, assess the impact of the delay to the contract	1	2	3	0	#DIV/0!	Remarks
2	Quality of project programme (schedule of work)	Existence of project programme in accordance to the requirement of the contract	If the Programme of Work (Schedule of Work) detailed, complete and achievable and submitted in accordance with the terms and conditions governing the contract ? were important milestones in the project are considered?						

3	Adherence to project programme	The implementation of the project should adhered to project programme	Were the programme of works adhered to during implementation?				
4	Quality of contractor's site organization and staff	The Contractor's site organization and staff to be prepared as required under the contract	Was the contractor's site organization and staff accurately and timely prepared? What is the quality of the site organization chart?				
5	Quality of supervising Project Manager's site staff	Presence of quality assurance plan in accordance with the terms and conditions	Was the quality of Project Manager's site staff adequate in relation to works at hand?				
6	Quality of quality assurance programme	Presence of quality assurance plan in accordance with the terms and conditions	Was the quality assurance plan adequately prepared?				
7	Adherence to quality assurance programme						
	Appointment of quality assurance team	Existence of appointed project supervisors as required by Reg. 252 (1) of GN No. 446 of 2013.	Was the project supervising team appointed?				
	Confirmation of qualification of supervision team	Project Managers qualification's adequate for the project at hand	Was the project supervising team adequate and capable of supervising the works?				
	- material testing & results Records	Presence of viable technical report of the executed works as required by Reg. 246 of GN No. 446 of 2013.	Were material tests conducted as per the contract and reports approved? what do results reveal in relation to the works specifications? Determine if all tests on work were done and materials tests were carried out and the results are realistic (the test results reflect actual site conditions) and the number and types of tests complied with the provisions in the contract				
	- Health & Safety	The works in progress should meet the required safety and EMP requirement as required under Reg. 241 (3)	Was the Health and Safety plan prepared? Was the plan adequate? Was the plan adhered to during contract implementation?				
	- Environmental and Social Impact Assurance	The works in progress should meet the required safety and EMP requirement as required under Reg. 241 (3)	Was the EMP plan prepared? Soundness of the plan? Was the plan adhered to during contract implementation?				

8	Management of contractual documents, including surety and insurances bonds	The procuring Entity shall require the winning bidder to submit appropriate security as required under Reg. 29 (b) of GN. 446	Were contractual documents (surety and bonds) appropriately managed? Were there any deviations in issuing such documents ? Was there relevant extensions of advance payment/performance guarantee in case of delayed completion/recovery?	
9	Quality and management of project	Project correspondences should be properly prepared and administered	Were project correspondences adequate in regard to nature and complexity of the project? Were project correspondences timely replied and properly administered?	
	- general correspondence	project site instructions/ approval should be issued by the project manager or supervisor as required by Reg. 114(d) of GN No. 446 of 2013	Were instructions and approvals timely issued? Were there any delays in issuing instructions which resulted into claims? Determine the impact of delayed issue of site instruction/ approval to project time/cost and quality	
	- site instructions	Minutes of site meetings should be prepared and distributed to project stakeholders as required by the contract	Were site meetings held? were minutes of site meetings prepared? Were the quality of site meeting minutes adequately prepared?	
	- minutes of site meetings	Are project progress reports prepared by the project manager or supervisor as required by Reg. 243(1&3) of GN No. 446 of 2013	Were progress reports timely prepared as required under the contract? Were the progress reports adequately prepared?	
	- progress reports [Reg. 114 (b) GN 446]	Presence of viable inspection report of the executed works as required by Reg.243(2) &252 (2) of GN No. 446 of 2013.	Were inspection reports timely prepared? Analyse the adequacy of the inspection reports	
	- works measurement and inspection records	Do project managers certify payment before are effected as per Sec. 39(1f) of PPA, 2011 and Reg. 114(a) of GN. No. 446 of 2013?	were payment certificates certified by project Manager?	
	- interim and final payment certificates [Reg. 114(a) of GN. No. 446 of 2013?	Were payments made within reasonable time as stated in the contract and as stipulated in Reg. 44 (1), 242(1) and 243(2, 3, 4, 5, 6&7) of GN No. 446 of 2013.	Were payment certificates effected within stipulated time in the contract? Were there any delays which resulted into interest claims? Determine the impact of delayed payment to project cost.	
	Timely payment of certificates			

					<p>were there relevant instructions from the Engineer in relation to the variation? Were variations appropriately assessed? Were variations approved by the TB? Were the variations relevant in relation to their scope and timing? were there works which were executed prior TB approval</p>							
10		Assessment (including validity) of variations	Are variations issued as per the requirement of Section 33(1)(b), PPA 2011 & Reg. 110(2)(3) GN. 446]	The TB to review all applications for variations, addenda as required under Section 33(1)(b), PPA 2011 & Reg. 110(3) GN. 446	were variations approved by the TB? Were there works which were executed prior TB approval?							
11		Assessment (including validity) of claims and related cost overruns	Assessment of claims as per contract provisions		Were claims accurately prepared? Were claims approved by TB?							
12		Appropriate application of remedies for delays	Appropriate actions taken to delays of contractors as required by Sec. 77(4) of PPA, 2011 and Reg. 112 of GN No. 446 of 2013 and contract provisions		Assess whether action to delays are taken by project supervisors by deducting the liquidated damages, If remedies ought to have been applied, but not implemented, establish the amount of liquidated damages out to have been deducted							
13		Assessment (including validity) of project delays and extensions of time	The time extension order granted as per appropriate procedures as required by Sec. 77(3) of PPA, 2011 and Reg. 111 of GN No. 446 of 2013 and contract provisions		Was there a request for extension of time and whether the request was acted on timely by the AO? Analyse the reasons for extension of time and state whether the reasons were justified/? Analyse whether the granted extension of time has any cost implication in the project, and quantify it.							
			Average Performance: Construction Supervision and Contract Administration									
D Project Completion and Closure Stage												
1		Quality and completeness of as-built-drawings	as built drawings issued as required by the contract		Quality and completeness of as built drawings							
2		Compilation and Management of final Inspection, Site handover minutes & snag list	inspection carried out on completion and defects noted issued to the Contractor		Were works practically completed and handing over of the property done as appropriately? Were there any delays in handing over the project?							
3		Timely issuance of Practical Completion Certificate, Final Certificate	Works contracts practically completed as per defined scope and specs in the contract		Practical completion and final completion certificates timely issued?							

		Final inspection carried out on completion and defects noted issued to the Contractor	Was the contract properly close out and report prepared? Were final payments / retention money timely issued?								
4	Management of the defects liability period										
5	Quality and Adequacy of final project report	Final Account of the project properly prepared as per requirements of the contract									
6	Compliance of final quantities paid for with those reflected by the actual investment as per as-built drawings	Quantities for final account to be reflected in the investment cost									
7	Compliance of project cost as per final account with accepted tender price	Project final costs in relation to accepted tender price									
8	Compliance of actual project completion time with the contract period	Actual completion time vs tendered contract period									
Phase: Project Completion and Closure Stage											
1	Quality of Executed Works			1							CONCLUSION
1 Based on visual assessment, determine whether											
• Overall quality of workmanship											
• Overall quality of materials used											
• Overall quality of walls, columns and beams											
• Overall quality of plaster and painting or any other type of finishes											

Overall quality of roof structure and covering	The quality of the roof structure and covering should be in conformity to size, specs and method of fixing.	Do the quality of roof structure and covering as per specs and drawings; for roof structure check the sizes of timber, straightness and free from defects, check the spacing of trusses/purlins and bracing in relation to engineering drawings				
Overall quality of ceiling	The quality of the ceiling should be in conformity to size, specs and method of fixing.	Check the quality of ceiling in relation to type, size, joints and free from waves				
Overall quality of External works	The overall quality of external works should be as per contract	Check the quality of external works to conform to specs such as specified strength for paving blocks, area covered, method for laying paving blocks/kerbstones (free from troughs)				
Absence of defects, such as cracks, bends, failures, etc	The completed works should be as per contract provisions and specs	The quality of completed works should be free from cracks, Failures etc				
Functional requirements (assess whether floors, etc)	Various elements of work should be as per contract provisions	Do the sizes, location and functions of the elements appropriate?				
2 Based on physical site measurements, determine						
Correctness of setting out (designed/specified versus actual/verified)	The size of the building should be as per drawing	check the correctness of dimensions in relation to drawings?				
Compliance on scope (Quantum of work done versus specified/paid for)	The scope of works should be as per bills of quantities& drawings	is the scope in conformity to drawings and specs				
Correctness of plinth levels	The plinth level should be ascertained at site	is the plinth level adequately ascertained in relation to site terrain?				
Correctness of functional requirements (verification of rooms dimensions)	The dimensions of rooms should be as per drawings	are sizes of individual rooms as per drawings?				
Dimensions of windows, doors, etc	The dimensions for windows and doors should be as per drawings	is the size of door/window as per drawings, and as per functional requirements? What is the quality of timber/aluminium in relation to specs				
Compliance on materials utilization (specifications, warranties, dimensions, make or Visual assessment of quality of materials used and works done	The materials should be used as per specifications The quality of materials used should satisfy the requirements	Do materials utilization comply with provisions Do the quality tally with the specs				
3 Based on site measurements, determine whether dimensions of rooms and other functions comply with the technical drawings and	The dimensions of rooms and other functions comply with the technical drawings and specifications Assess the conformity of cement, sand, aggregates and blocks in relation to contract specification	take physical measurements to ascertain the sizes of rooms in relation to drawings and functional requirements Does the quality of materials in conformity to technical specs? Materials like cement, sand, aggregates, reinforcement and water to conform to specified standards				
4 Based on sample field tests determine whether the quality of materials used in concrete structure comply with the technical specifications						

5	Based on sample field tests determine whether the quality of materials used in finishing works comply with the technical specifications	The quality of materials used in finishing to comply with specs	Check the quality of finishing materials like tiles (thickness and texture), sand (whether free from salt, fine sand for smooth finish) was the provision for site clean up and restoration provided for in the contract document? what is the conformity in relation to provisions and EMP?							
	6	Assess compliance of site clean-up and restoration of disturbed and/or damaged areas with Environmental Management	disturbed areas restored and site cleaned on completion as provided for in the contract and in conformity to EM	Was the safety/EMP plan prepared ? Was the safety and EMP plan adhered to?						
7	For uncompleted projects, assess compliance of on-going construction activities with safety and EMP requirements	Assessment of compliance with safety and EMP requirements for ongoing construction activities								
Average Performance Quality of Works							#DIV/0!	#DIV/0!		
Evaluation Scale										
Overall Project Performance							#DIV/0!	#DIV/0!		
Planning, design and tender docu Procurement Stage Construction stage Project completion and closure st Quality of Executed Works										
Poor 0%-49% Fair 50% - 75% Good 75% - 100% Unsatisfactory Performance 0%-<75% Satisfactory Performance 75% - 100%										

ANNEX 3: Corruption Red Flags Checklist

Guidelines for Use of Red Flags Checklist

Objective of the Checklist:

The objective of this *Red Flags Checklist* is to provide a tool for the Public Procurement Regulatory Authority (PPRA) to collect information about possible symptoms of corruption in the procurements carried out by procuring entities in Tanzania.

When to use the Checklist?

The Red Flags Checklist shall be applied in all audits carried out by PPRA. For every procurement sampled for auditing, a Red Flags Checklist shall be completed by the auditor as part of his or her auditing of the various phases of the procurement.

How to use the Checklist?

The Checklist consists of 50 statements (“red flags”), each of which must be thoroughly considered by the auditor when auditing procurement. For each statement, the auditor must assess whether the statement is true or false, or whether the statement is not relevant to the procurement in question. Based on the assessment, the auditor must tick one of three possible boxes: “Yes”, “No”, or “Not applicable”. The three boxes are to be used as follows:

- | | |
|-----------------------|--|
| Yes | Indicates that the auditor is able to verify the red flag based on the available documentation. For example, for red flag no. 8 (Using inappropriate method of procurement), the assessor should look whether method applied for the procurement is in line with the requirement of the PPA and PPR, not only that but also to check whether non competitive methods used had reasonable justifications, in order to establish if there is an artificial deviation from the required method to favour certain bidder. If this is the case, the auditor will verify this red flag by ticking “Yes”. |
| No | Indicates that the auditor is able to falsify the red flag based on the available documentation. For example, for red flag no. 23 (Bidders submits unrealistic bid indicating collusion or cartel bidding), the auditor must compare the formats, content, prices of all submitted tenders in order to detect major similarities. If such similarities are not found, the auditor falsifies this red flag by ticking “No”. |
| Not applicable | Indicates that the “red flag” is not relevant to the method of procurement used for the procurement case in question. For example, red flag no. 5 (<i>The tender is not packaged with other tenders for similar nature</i>) only applies to procurement of goods, as the problem of splitting contracts is not relevant to works and services. When completing the Red Flags Checklist for major works procurement, the auditor hence ticks “Not applicable” for this red flag. Similarly, red flag no. 9 (<i>Insufficient advertising</i>) does only apply |

to procurements using competitive methods for which advertisement is a requirement. When completing the Red Flags Checklist for a quotation, the auditor hence ticks “Not applicable”. In other words, the auditor is required to use his or her professional judgment when completing the Checklist.

The “Not applicable” box shall also be used if insufficient documentation is available to assess whether a red flag exists or not.

For each of the 50 red flags on the Checklist, one, and only one, of the three boxes must be ticked off. By completion of the Checklist, no single red flag on the list must remain unanswered.

How to analyse information collected in the red flag check list

The check list should be calculated through two stages in the following way;

First stage (Single tender)

At this stage, percentage of corruption symptoms should be calculated for each sampled tender as follows;

- i. Calculate percentages of corruption symptoms at each procurement phase by summing-up the number of all ‘Yes’ for the particular phase and divide it to the total number (Summation) of ‘Yes’ and ‘No’ for the particular phase and multiply by one hundred.
- ii. Calculate percentage of corruption symptoms for all procurement phases. i.e. Sum-up the number of all ‘Yes’ for the entire check list divide it to the total number of ‘Yes’ and ‘No’ for the entire check list and multiply by one hundred.

By formula; Percentage of corruption symptoms; $= \frac{\Sigma(\text{Yes})}{\Sigma(\text{Yes})+(\text{No})} \times 100\%$

Second stage (all sampled tenders)

The second stage deals with calculation of the average percentage of corruption symptoms for the overall procurement activities done by the procuring entity which is calculated based on the sampled tenders as follows;

- i. Percentage average of corruption symptoms found at each phase for the sampled tenders– calculated by summing-up percentage of corruption symptoms found for the particular phase of the sampled tenders and divides it to total number of tenders sampled.
- ii. Average of the overall percentages of corruption symptoms for the sampled tenders–calculated by summing-up percentage of overall corruption symptoms for each tender divided to the total number of sampled tenders.

Summary table:

	T1	T2	T3	T4	T(n)	Average (Red flag /Corruption symptom level) (%)
1 st Phase%						
2 nd Phase%						
3 rd Phase%						
Overall%						

Red Flags Checklist

Procuring entity	
Procuring entity ID no.	
Tender number	
Name of auditor	
Date of report	

Procurement phase	Red Flag	Yes	No	N/A
Pre-bid phase	1. Whether the objective of the procurement is clear (Y/N)			
	2. Whether the procurement is included in the procurement plan or revised procurement plan (Y/N)			
	3. Whether sufficient or consistent planning timeframe has been applied (Y/N)			
	4. Whether the tender is packaged with other tenders for similar goods (if applicable). (Y/N/NA)			
	5. Whether there are deviations from standard bidding documents (Y/N)			
	6. Whether technical specifications/ TOR are sufficient or clear (Y/N)			
	7. Whether technical specifications/TOR are detailed and not directed to a specific supplier, contractor or service provider or asset buyer (Y/N)			
	8. Whether the selected procurement method observes existing thresholds (Y/N)			
	9. Whether there was sufficient advertising (Y/N/NA)			
	10. Whether adequate time has been given to bidders for preparing their bids (Y/N)			
	11. Whether mandatory approvals by appropriate authority are obtained (Y/N)			
	12. Whether there are accurate minutes of pre-bid meetings (Y/N/NA)			
	13. Whether clarifications are circulated to all bidders (Y/N/NA)			
	14. Whether there were complete records of the pre-bid phase (Y/N/NA)			

Procurement phase	Red Flag	Yes	No	N/A
Evaluation and award phase	15. Whether Evaluation Committee members possess the necessary technical expertise (Y/N)			
	16. Whether the evaluation is being conducted by adequate number of persons (Y/N)			
	17. Whether the same Evaluation Committee members are involved in evaluating of tenders which they have technical qualification and not evaluating many or all procurements (Y/N)			
	18. Whether qualified bidders are properly evaluated and not dropped out during the tender process (Y/N)			
	19. Whether there is disqualification of bidders on minor technicalities (Y/N)			
	20. Whether there are unreasonable delays in evaluating the bids and awarding the contract (Y/N)			
	21. Whether evaluation criteria are properly followed without being amended after receipt of bids (Y/N)			
	22. Whether there is narrow variance between the cost estimate and the bid amounts received (Y/N)			
	23. Whether there are major similarities between competing bids (e.g. similar format, errors, prices) (Y/N)			
	24. Whether the prices of competing bids are fair and not contain unusual or narrow variance between them. (Y/N)			
	25. Whether the same shareholders are involved in several bids using different company names (Y/N)			
	26. Whether bidders with major errors are properly disqualified (Y/N)			
	27. Whether the required documentation are properly submitted without falsification (e.g. authorizations, CVs, etc.) (Y/N)			
	28. Whether there are publications of award decisions simultaneously to all bidders (Intentions to Award) (Y/N)			
	29. Whether contract conforms with bid documents (e.g. specification or quantities or TOR) (Y/N)			
	30. Whether there were no Non-responsive bids which are made responsive as result of clarification from procuring entity (Y/N)			
	31. Whether quality criteria are properly defined in the contract (Y/N)			
	32. Whether there are complete records of evaluation and award (Y/N)			
	33. Whether the contracts are vetted by AG or Legal officers of the PE (Y/N)			
	Contract management and audit phase	34. Whether Negotiation team includes adequate technical expertise (Y/N/NA)		
35. Whether minutes of the negotiations are in line with Terms and Conditions of Contract (Y/N/NA)				
36. Whether contract specifications/TOR were constant and not altered after award of contract (Y/N)				

Procurement phase	Red Flag	Yes	No	N/A
	37. Whether contract is signed by duly authorised officer (Y/N)			
	38. Whether the bidder delivers the quality of goods, works, services as specified in contract (Y/N)			
	39. Whether the supplier delivers the right quantities of goods and materials (Y/N)			
	40. Whether the bidder delivers the required of goods, works or services without delay (Y/N)			
	41. Whether replacement of nominated consultant personnel is properly done without replacing by less qualified personnel (Y/N/NA)			
	42. Whether instructions are given in writing to contractors/consultants, services providers and asset buyer (Y/N)			
	43. Whether cost overruns are adequately justified (Y/N)			
	44. Whether contract variations are approved by appropriate authority (Y/N)			
	45. Whether liquidative damages in case of delays are properly imposed (Y/N)			
	46. Whether progress payments or final payment are made within stipulated timeframe (Y/N)			
	47. Whether retention money are paid in a timely manner (Y/N/NA)			
	48. Whether supplier/contractor/consultant are properly paid without double payment (Y/N)			
	49. Whether evaluation of the contractors', suppliers, consultants and asset buyer quality of performance was sufficiently done (Y/N)			
	50. Whether client is satisfied with the completed products (Y/N)			

ANNEX 4: Procurement Processing - Checklist for Internal Auditors

This checklist is a result of the request made during Stakeholders workshop by Internal Auditors that the **Quarterly Internal Audit reporting tool** need a bit of elaboration for Auditors to understand issues in each Audit Area they are expected to cover during auditing. The matrix below shade light on the same; the checklist is open for further review and comments intended for improvement.

Audit Area	Audit Criteria and/or Activities	Proposed Audit Working Paper		
		Yes	No	Response Particulars
1. Institutional set-up and performance	<p>Verify the following:</p> <ul style="list-style-type: none"> • Establishment and Composition of TB <ul style="list-style-type: none"> ○ that the TB establishment is and composition is in compliance to Section 31 -(2) for all PEs except LGAs and Section -(3) for LGAs of the PPA,2011; ○ Signed appointment letters by accounting officer exist; • Notification to the Authority <ul style="list-style-type: none"> ○ Verify that a notification letter to PPRA on composition of the tender board and the qualifications of its members is in place; • Knowledge of PPA and PPR <ul style="list-style-type: none"> ○ that members of the TB attended PPA and PPR training, or have knowledge, experience or expertise in procurement • Establishment and Composition of PMU <ul style="list-style-type: none"> ○ that PMU establishment including its staffing is per Section 37 of PPA, 2011; ○ that HPMU is directly reporting to Accounting Officer ○ that the qualifications of HPMU is in accordance to Section 37 of PPA, 2011; ○ that PMU has a sub vote and is allocated fund in the budget. • Knowledge of PPA and PPR <ul style="list-style-type: none"> ○ that PMU staff attended PPA and PPR training; ○ that PMU staff have knowledge, experience or expertise in procurement • Existence of Internal Audit Units <ul style="list-style-type: none"> ○ that the IAU exists ○ that IAU is appropriately staffed; ○ that IAU staff attended PPA and PPR training 			
2. Annual Procurement Planning	<p>Check and verify the following:</p> <ul style="list-style-type: none"> • that the PE prepared an annual procurement plan; • that scheduling of tender processing timeline is 			

Audit Area	Audit Criteria and/or Activities	Proposed Audit Working Paper		
		Yes	No	Response Particulars
	<p>reasonable;</p> <ul style="list-style-type: none"> • that aggregation of requirements adhered; • that scheduling of TB meetings was appropriate; • that APP integrates well with approved Budget; • that methods of procurement are consistent with threshold and limits of application; • Approval of APP <ul style="list-style-type: none"> ○ that the entity have an approved APP ○ that the APP was approved by the AO or official designated by the AO; • Advertisement of GPN to the Public <ul style="list-style-type: none"> ○ that the entity advertised the GPN to the public ○ that the PE submitted to PPRA the summary of the GPN for posting into the website and TPJ. • APP Implementation <ul style="list-style-type: none"> ○ that implementation was carried out efficiently (cycle time per plan and actual); 			
3. Tender Process	<p>Check and verify the following:</p> <ul style="list-style-type: none"> • that in all procurements, PMU used standard tendering documents issued by PPRA • that tender documents are properly arranged and complete; • that specifications are neutral and terms of references are sufficiently detailed in terms of scope and resource requirement; • that evaluation criteria are unambiguous; • that the tender/proposal data sheet is properly completed; • that procurement or selection methods have been appropriately used and promotes competition; • that all opportunities within the PE are advertisement; • that there is adequate time allowed for preparation of bids/proposals; • that tender notices were submitted to PPRA; • that tenders/proposals are received and opened as per provision of the adverts and solicitation documents; • that tenders/proposals are evaluated and approved in compliance to the PPA, 2011; • that award decision is communicated internally and externally; • that all tenders/proposals are awarded within the tender validity; 			

Audit Area	Audit Criteria and/or Activities	Proposed Audit Working Paper		
		Yes	No	Response Particulars
	<ul style="list-style-type: none"> • that tenders are processed efficiently in respect to time allowed in the APP; • that publication of all awards from competitive tendering were issued; • that all unsuccessful bidders were notified; • that the PE is consistently using procedural forms as issued by PPRA. 			
4. Contracts Management	<p>to verify the following:</p> <ul style="list-style-type: none"> • that contract document are appropriately arranged and completed; • that contracts were properly signed and necessary attachments included; • that the following contracts management issues are appropriately administered: <ul style="list-style-type: none"> • handling of securities and insurance covers; • timely issuance of instructions; • contract meetings are held and records prepared and signed; • appropriate extension of time for execution or delivery; • appropriate application of delay remedy clauses; • timeliness of site possession; • quality of the project or service programme; • adherence to project or service programme; • progress reports are prepared; • quality Control Issues <ul style="list-style-type: none"> ○ availability of quality specifications or ToR; ○ appointment of qualified project manager or supervisor; ○ availability of quality implementation reports or service delivery reports; ○ appointment of goods inspection and acceptance committees with appropriate qualification; ○ availability of quality inspection reports ○ availability of quality assurance plan and its adherence; • scope control issues <ul style="list-style-type: none"> ○ Are there justifications for variations ○ Appropriate procedures followed in issuing variation orders/contract amendments • cost control issues <ul style="list-style-type: none"> ○ payments made on time ○ evidence of inspection reports and measurement sheets attached to payment certificates; 			

Audit Area	Audit Criteria and/or Activities	Proposed Audit Working Paper		
		Yes	No	Response Particulars
5. Records Management	<p>Check to verify the following:</p> <ul style="list-style-type: none"> • availability of complete procurement records; • arrangement and location of procurement records; • availability of adequate space for keeping procurement records; • availability and adequacy of storage facilities; 			
6. Implementation of the Systems prepared by PPRA (PMIS/CMS)	<p>Check to verify the following:</p> <ul style="list-style-type: none"> • that APP was submitted to PPRA in time; • that there was timely submission of contracts completion reports to PPRA; • that there was timely submission of the monthly procurement reports; • that there was timely submission of the quarterly procurement reports; • that there was timely submission of annual procurement reports 			
7. Handling Complaints in the Procurement process	<p>Check to verify the following:</p> <ul style="list-style-type: none"> • that complaints register exists within the PE; • that a complaint(s) was registered; • that a complaint(s) registered was properly handled; • that the complainant got satisfied with the PE resolution of the matter 			

ANNEX 5: Checklist of risks in the procurement process

1. Identifying the need and planning the procurement
2. Developing the specification
3. Selecting the procurement method
4. Procurement documentation
5. Inviting, clarifying and closing offers
6. Evaluating offers
7. Selecting the successful tenderer
8. Negotiations
9. Contract management
10. Evaluating the procurement process
11. Disposals

1. Identifying the need and planning the procurement⁵

Risk	Likely consequences	Action
Understatement of the need	Procurement of unsuitable product or service Money wasted Need not satisfied	Analyse need accurately
Overstatement of the need	Greater expense Poor competition	Analyse need accurately Use functional and performance requirements
Misinterpretation of user needs	Totally unacceptable procurement or not most suitable product or service Time lost Increased costs Possible downtime	Improve consultation with users Obtain clear statement of work and definition of need
Insufficient funding	Delay in making the procurement Additional costs for re-tender	Obtain appropriate approvals before undertaking process Improve planning
Impractical timeframe	Inadequate responses from tenderers Reduced competition Delivery schedule not met	Improve forecasting, planning and consultation with users Improve communication with potential tenderers
Probity issues	Increased procurement costs Misuse of resources Most suitable product not obtained Unethical conduct	Implement best practice policies, guidelines and practices Maintain ethical environment Improve training of personnel Put suitable controls and reviews in place Consider using a probity adviser Improve communication with potential tenderers

2. Developing the specification

Risk	Likely consequences	Action
Narrow definition or commercial specification (eg. use of brand name)	Fewer alternatives Most suitable product or service may not be obtained Increased costs	Define the specification in terms of required outputs Use functional and performance specifications

⁵ Downloaded from <http://www.purchasing.tas.gov.au/buyingforgovernment/getpage.jsp?uid=07CC4222E4F10F00CA256C8D007F9FC6>

	Risk	Likely consequences	Action
	Definition of inappropriate product or service	Need not satisfied Time lost Increased costs Possible downtime	Ensure specification is consistent with needs analysis Improve market knowledge Use functional and performance specifications
	Biased specification	Inadequate responses from tenderers Claims of unfair dealings	Use functional and performance specifications Implement a control mechanism to review specification before release
	Inadequate statement of requirements	Variety of offers Insufficient responses Products offered not meeting needs Difficult to evaluate	Be familiar with requirements Use functional and performance specifications Use an Expression of Interest or Request for Information to clarify requirements (be careful not to infringe intellectual property rights or copyright)

3. *Selecting the Procurement method*

	Risk	Likely consequences	Action
	Failure to identify potential sources	Lack of offers from suitable tenderers	Improve procurement planning processes Improve market knowledge Seek industry participation
	Selecting inappropriate method	Need to seek offers again Possible cost variations Failure to obtain value for money	Improve implementation of procurement policies, guidelines and practices Improve tender documentation and clearly identify the evaluation criteria in Request for Tenders Provide staff with appropriate training and experience

4. *Procurement documentation*

	Risk	Likely consequences	Action
	Terms and conditions unacceptable to tenderers	Loading of costs in offers Having to modify tender terms and conditions Disruption Low response	Use standard documentation prepared by PPRA Select appropriate documentation for procurement type (i.e. goods, services, goods and services, or information technology related) Improve tender planning Assess and allocate risks appropriately Consult with Crown Law Use commercially acceptable terms Provide staff with appropriate tender planning and procurement skills
	Providing inadequate information	Loading of costs in offers Variations in offers Having to provide clarifying information, causing delays in tender closing Additional costs	Ensure staff have appropriate tender planning and documentation training and experience Improve tender planning and preparation Review tender documents before

	Risk	Likely consequences	Action
			issuing them and ensure evaluation criteria contain the critical factors on which assessment of tenders will be based

5. Inviting, clarifying and closing offers

	Risk	Likely consequences	Action
	Failure to adequately address enquiries from tenderers	Claims of unfair practices Offers with qualifications by tenderers Withdrawal of offers	Implement standardised procedures for responding to enquiries Provide staff with appropriate tender management training and experience Respond in a timely manner to enquiries Allow adequate time for tenderers to respond
	Actual or perceived favouritism in providing information	Complaints from tenderers Withdrawal of offers	As above Answer queries in writing and provide copies to all potential tenderers Ensure that all potential tenderers are provided with any addenda
	Actual or perceived breach of confidentiality	Complaints from tenderers Mistrust by tenderers	Establish formal security procedures Train staff in their obligations Perform regular audits and reviews of security processes Advise tenderers of security measures
	Insufficient number of responses	Need to undertake process again Increased costs Delayed delivery to the client Poor value for money due to limited competition	Use appropriate tender advertisement strategy to increase competition (eg. consider advertising tenders in other publications as well as the local paper) Provide potential tenderers with advance notice of tender requests Improve tender documentation and specifications Allow sufficient time for tenderers to respond
	No response from known quality suppliers	Reduced competition Increased costs of products or services	Actions as above for insufficient number of responses Improve your market knowledge Review specifications or conditions Seek feedback from known suppliers on their non-response

6. Evaluating offers

Risk	Likely consequences	Action
Failure to follow effective evaluation procedures	Inconsistent evaluations Possible complaints from tenderers Subjective not objective evaluation of offers	Provide staff with appropriate tender assessment and evaluation training and experience Improve tender assessment and evaluation processes Maintain, audit and review evaluation procedures Ensure that Evaluation Committee members declare any conflicts of interest
Breaches of security	Claims of unethical or unfair practices Loss of faith with tenderers	Maintain, audit and review security procedures Provide staff with appropriate training and experience and monitor performance Ensure that Evaluation Committee members understand and sign Confidentiality Agreements
Offers fail to meet needs	Need to call tenders again Additional costs Delay in delivery	Improve market knowledge Improve tender documentation Conduct market research Develop functional and performance specifications
Failure to identify a clear winner Decision made on subjective grounds	Claims of unethical and unfair behaviour Complaints from tenderers	Ensure evaluation criteria contain the critical factors on which the assessment of tenders will be based and that they are clearly identifiable to tenderers in tender documents Ensure evaluation criteria are appropriate and measurable Ensure that Evaluation Committee members sign Declaration of Conflict and Confidentiality Agreements

7. Selecting the successful tenderer

Risk	Likely consequences	Action
Selecting an inappropriate supplier	Failure to fulfil the contract	Provide staff with appropriate tender evaluation, financial and technical skills training and commercial expertise Improve evaluation procedures Improve evaluation criteria and clearly identify them to tenderers in tender documents Reject unacceptable offers Perform financial, technical and company evaluations before awarding contract Procurement Review Committee to review tender and selection process prior to awarding contract
Selecting inappropriate product	Failure to meet the client's need	Ensure users are involved in the evaluation/selection process Improve technical evaluation

	Risk	Likely consequences	Action
			procedures and train staff as appropriate Procurement Review Committee to review tender and selection process prior to awarding contract

8. Negotiations

	Risk	Likely consequences	Action
	Not matching the expectations of buyer and tenderer	Contract disputes Delivery delays Cost variations Reduction in value for money Procurement of less suitable product Inefficient use of resources	Improve communication, including ensuring that Conditions of Contract form part of the Request for Tender Provide staff with training in contract planning and management Define terms carefully Record each party's obligations Clarify all ambiguities before signing the contract
	Deadlock on details of agreement	Delays in delivery Need to restart procurement Possible cost of legal action	Look at alternatives to share risk Distinguish between essential and non-essential goals and requirements
	Failure to secure mandatory conditions	Inability to finalise contract Delays in delivery Variations in cost Inefficient use of resources	Establish baseline before negotiations Distinguish essential goals from others Consider variations to contract Provide negotiators with adequate training
	Failure to secure agreement in relation to Crown Contracts Confidentiality Policy	Inability to finalise contract Delays in delivery Inefficient use of resources Requirement to negotiate with other ranked suppliers	Ensure potential suppliers aware of Policy requirements before submitting responses Seek exemption from Crown Contracts Confidentiality Standing Committee
	Unfair or onerous requirements on the tenderer in the contract conditions	Contract disputes Invalidity of contract Legal action Poor supplier/customer relationship	Provide negotiators with adequate training and support Negotiate commercial terms Terms should be fair and reasonable
	Failure to reflect the terms offered and agreed in the contract	Contract disputes Legal action Poor supplier/customer relationship	Check final draft of contract with successful tenderer Keep records of all negotiations and agreements
	Inadvertently creating a contract without the delegate's prior approval	Expense of negotiating out of the contract and paying damages Committing to other associated work prior to main contract existing	Procedure in place to ensure delegate's approval obtained first Provide negotiators with adequate training

9. Contract management

	Risk	Likely consequences	Action
	Variations in price and foreign exchange	Cost overruns	Agree on prices and the basis of prices Agree on a formula for calculating variations

	Risk	Likely consequences	Action
	Unwillingness of the supplier to accept the contract	Delays in delivery Need to restart procurement	Seek legal redress if non-acceptance causes loss Negotiate but retain integrity of the contract
	Failure of either party to fulfil the conditions of the contract	Contract disputes Failure to satisfy needs Delays in delivery Downtime Legal action	Ensure good contract administration and performance management Hold regular inspections / meetings and ensure progress reports Ensure all staff know responsibilities and conditions and Ensure good record keeping and documentation
	Inadequately administering the contract	Cost increases Failure of contract Full benefits not achieved Delivery of unsatisfactory product Contract/supply disputes	Maintain up-to-date agency procedures and practices Ensure all staff are suitably trained and experienced in contract planning and management
	Commencement of work by the supplier before contract is exchanged or letter of acceptance issued	Potential liability to pay for unauthorised work Possibility of legal action for perceived breach of contract	Confirm verbal acceptance of contract with written advice Accept all contracts in writing Ensure approvals are received before allowing work to start
	Unauthorised increase in scope of work	Unanticipated cost increases Contract disputes	Ensure all contract amendments are issued in writing Record all discussions and negotiations Confirm instructions in writing
	Loss of intellectual property	Loss of commercial opportunity Unwarranted reliance on supplier for product support	Ensure suitable clauses are included in the contract
	Failure to meet liabilities of third parties (eg. royalties or third party property insurance)	Legal action Damage to the agency's professional reputation	Check that all obligations are covered in the contract Agree on responsibilities Implement appropriate safety standards and programs
	Loss or damage to goods in transit	Delays in delivery Downtime Liability disputes	Include appropriate packaging instructions in specification Agree on insurance cover for supplier to provide Accept delivery only after inspection Know when title of goods is transferred to buyer
	Fraud	Misuse of resources Legal action Disruption to procurement activities	Maintain an ethical environment Follow and maintain fraud control procedures
	Key personnel not available	Progress on project disrupted Less expertise	Include requirement in specification and ensure compliance in post-tender negotiation Know the market Accept risk and manage possible delay

10. Evaluating the procurement process

	Risk	Likely consequences	Action
	Failure to evaluate procurement and management processes	Failure to improve procurement and management processes	Develop systematic evaluation methods, techniques and evaluation criteria
	Failure to identify and address problems	Procurement objectives not achieved Possible failure in the future	Agree on performance criteria (with supplier and customer) Develop good relationships with suppliers Include evaluation clause in the contract Implement performance management strategies

11. Disposals

	Risk	Likely consequences	Action
	Collusive bidding at auction	Not achieving best return Claims of unethical and unfair practices	Set reserve prices Deal with reputable firms Include disposal clause in initial contract Maintain ethical environment
	Inadequate tender management	Claims of bias and favouritism to organisations or individuals Reduction in value for money	Sell by open tender Document reasons for decision Provide staff with appropriate training

ANNEX 6: Guide to Selection of Procurement Methods

A3.1 Maximization of Procurement through Competition

Amongst the objectives of PPA 2011 is the need to promote competition and ensure that competitors are treated fairly. Selection of appropriate procurement method is one way of ensuring that this objective is achieved.

GN. No. 446 of 2013 provides for different procurement methods ranging from the most competitive ones to those where there is no competition at all. The Regulations emphasize that open tendering, which is the most competitive method and which accords opportunity to any bidder with qualifications to participate, to be a default procurement method. No conditions are attached to use open tendering, however due regard need to be observed with respect to the level of competition required vis-a-vis the cost of the item to be procured. Thus the desire to attract maximum competition must be balanced with the costs likely to be incurred compared to the cost of the item or service being purchased.

A3.2 Open Procurement Methods

Part V of GN. No. 446 of 2013 covers methods of procurement and their conditions for use. According to **GN.446-R149** and as discussed in Section 6.1, default Method shall be OPEN TENDERING – NATIONAL AND INTERNATIONAL. Other methods may be used as an exception subject to the approval of Tender Board if: Competitive tendering is not considered to be the most economic and efficient method of procurement; and the nature and estimated value of goods, works or services permit. Open tendering procedures including International Competitive Tendering, National Competitive tendering and Restricted Tendering are discussed in details in **Table A3.1**

A3.3 Procurement methods involving Negotiations

Apart from open tendering procedures discussed in **Section 6.2**, GN. No. 446 of 2013 has separated other methods of procurement into two categories, those involving negotiations and those without negotiations. Procurement methods with negotiations include:

- Two stage tendering –**GN.446-R.154**;
- Request of Proposal with simultaneous negotiations – negotiations held with all bidders –**GN.446-R.155 to 156**;
- Request for Proposal with Consecutive Negotiations –**GN.446-R.157**;
- Request for Proposals with competitive negotiations –**GN.446-R.158**;
- Single source procurement method for goods or services –**GN.446-R.159-160**;
and
- Single source procurement method for works – **GN.446-R.161**.

GN.446-R.153 gives conditions for use of two stage tendering and request for proposal with simultaneous negotiations, consecutive negotiations and competitive negotiations and they are summarized in **Table 6.1**. All methods have one purpose in common- to ensure clarity of the PEs requirements before obtaining the final price quotation. In addition two stage tendering two stage tendering, request for proposals with simultaneous negotiations as well

as with consecutive negotiations are applicable in re-tendering where the original tenders were rejected.

For more details with regard to two stage tendering, Request of Proposal with simultaneous negotiations, Request for Proposal with Consecutive Negotiations, and Request for Proposals with competitive negotiations one may wish to visit **Unictral Modal Law on Procurement 2011, Articles 30, 48, 49, 50 and 52.**

A3.4 Procurement Methods not involving negotiations

Procurement methods falling under this category include:

- Request for proposals without negotiations – **GN.446-R162**
- Shopping – **GN.446-R163 to 164;**
- Minor value procurement – **GN.446-R165;**
- Micro Value Procurement –**GN.446- R166;**

These methods are also discussed in detail in **Table A3.1.**

A3.5 Other Procurement Methods

Force account procurement method for works relates to PEs use of own staff, hired labour or public or semi-public agencies or departments in the construction of works- **GN.446-R.167.** One of the pre-requisites for the use of this method is the availability of qualified personnel within PE to carry out and/or supervise the required works.

Provisions with regard to community participation in procurement and procurement of commodities have remained the same as was contained in GN. No. 97 of 2005 (**GN.446-R.169**) save for procurement of the same using framework agreements if included in the list of common use items.

Other provisions are contained with regard to procurement of food stuffs for schools, training institutions, hospitals and prisons in which GPSA shall play a major role for procurement of such items having obtained standards for such goods from the relevant Ministries and estimated quantities from responsible institutions (**GN.446-R.170**)

Table A3.1: Methods of Procurement for Goods, Works and Non-Consultancy Services

Method of tendering		Circumstances for Use	Goods	Works	Non-Consultancy	Disposal of Public Assets
OPEN PROCUREMENT METHODS	International competitive tendering GN. 446-R150	The need to attract maximum competition where capacity within the country is not available or goods and services are not available in the country. Margin of preference in	No limit Procedure of Procurement is Covered in GN. 446-Part VII			
	National competitive tendering GN. 446-R151	The need to attract maximum competition where local capacity is available, the need to restrict payments to Tshs only, the need to minimize procurement transaction costs. Does not limit participation of foreign firms, however a margin of	Up to Tshs 1,000,000,000	Up to Tshs 5,000,000,000	Up to Tshs 1,000,000,000	Up to Tshs 5,000,000,000
	Restricted tendering (GN. 446-R152)	<ul style="list-style-type: none"> • Tenderers already prequalified, • Few specialized tenderers, • Emergency circumstances, • Need to achieve certain social objectives by involving the community, • Set aside contracts for purpose of 	No limit but must be justified <u>Procedure:</u> Except for no need of advertising and the time given to bidders, all requirements relating to international and national competitive tendering apply.			
PROCUREMENT METHODS INVOLVING NEGOTIATIONS	Two Stage Tendering GN. 446-R.153(1) & GN. 446-R154	<ul style="list-style-type: none"> • Need to refine aspects of the description of subject matter of procurement and to formulate them with the detail required to meet its requirements; • A repeat tender process following no submission of tenders in previously invited tender 	NO LIMIT IS GIVEN ON ITS APPLICATION???? <u>Procedure:</u> <ul style="list-style-type: none"> • Obtain tenders in two stages- First stage proposal without price on: technical, quality or performance characteristics of the subject of procurement; Contractual terms and conditions of supply; and professional and technical competence of the tenders • May engage in discussion with those who are responsive. Opportunity to be extended to all. • Revise set of terms and conditions of procurement in response to the tenderer submission and discussions held. Observe GN. 446-R154(7) • Invite responsive bidders to submit financial offers in response to revised set of terms and conditions of procurement. • Tenders wishing to withdraw in the second stage may do 			

Method of tendering	Circumstances for Use	Goods	Works	Non-Consultancy	Disposal of Public Assets
PROCUREMENT METHODS INVOLVING NEGOTIATIONS	Request for Proposals with Simultaneous Negotiations GN. 446-153(2) & GN. 446-R155 to 156	<p>NO LIMIT IS GIVEN ON ITS APPLICATION????</p> <p><u>Procedure:</u></p> <ul style="list-style-type: none"> • Invite tenders to submit their proposals. It may be desirable to limit the number through pre-qualification or pre-selection – the need to have a clear rating criteria to arrive to a required number; • Observe GN. 446-R155 (2) with regard to invitation to participate; GN. 446-R155 (9) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and GN. 446-R155(10) with regard to the contents of the Request of Proposals; • Simultaneous negotiations shall be conducted with tenderers that presented responsive proposals. The number of tenderers should be at least three to ensure competition. Conducted concurrently be the same representative of a PE. • Not allowed to modify the subject matter of procurement; any qualification or evaluations criterion; or minimum requirements with regard to qualifications of tenderers; 			
	Request for Proposals with Consecutive Negotiations GN. 446-R.153 (3) & GN. 446-R.157	<p>NO LIMIT IS GIVEN ON ITS APPLICATION????</p> <p><u>Procedure:</u></p> <ul style="list-style-type: none"> • Obtain proposals in the same way as Request for Proposals without Negotiations. • Observe GN. 446-R162 (2) with regard to invitation to participate; GN. 446-R162 (4) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and GN. 446-R162(5) with regard to the contents of the Request of Proposals; • Evaluate technical, quality and performance characteristic of a proposal and rank them in accordance with criteria and procedure for evaluating proposal set out in the request for Proposal document; • Invite the tenderer with the best ranking proposal for negotiations on financial aspects of its proposal; • Proceed to the next ranked if not possible to result into a procurement contract. • Not allowed to modify the subject matter of procurement; any qualification or evaluations criterion; or minimum requirements with regard to qualifications of tenderers; 			
	Request for Proposals with Competitive Negotiations GN. 446-153(4) & GN. 446- R158	<p>NO LIMIT IS GIVEN ON ITS APPLICATION????</p> <p><u>Procedure:</u></p> <p>Bidders are invited to submit proposals which are evaluated and each invited separately to negotiate its proposals before they are invited to submit their Best and Final Offer (BAFO) which shall not be negotiated</p> <p>Successful offer shall be the offer that best meets the needs of a PE.</p>			

Method of tendering		Circumstances for Use	Goods	Works	Non-Consultancy	Disposal of Public Assets
PROCUREMENT METHODS INVOLVING NEGOTIATIONS	Single source procurement for goods and services (GN. 446-R159)	<ul style="list-style-type: none"> Only one supplier of service provider available, emergency circumstances, additional supplies required in a contract awarded through open tendering, research, experiment or development basis where there is commercial viability, national defence or national security, continuity of functioning of existing equipment or Services; Compatibility with existing equipment; Standardization of Spare Parts. 	No limit, but must be justified. <u>Procedure:</u> Except for no need of advertising and the time given to bidders, all requirement relating to international and national competitive tendering in terms of documentation apply.			Not applicable
	Request for Proposals Without Negotiations - GN. 446 – R.162	<ul style="list-style-type: none"> Need to consider financial aspects of proposals separately and only after completion of examination of quality and technical aspects of the proposals. 	NO LIMIT IS GIVEN ON ITS APPLICATION???? <u>Procedure:</u> More less the same as Quality Based selection for Consultancy Services <ul style="list-style-type: none"> Invite tenders to submit their proposals. It may be desirable to limit the number through pre-qualification or pre-selection; Observe GN. 446-R162 (2) with regard to invitation to participate; GN. 446-R162 (4) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and GN. 446-R162(5) with regard to the contents of the Request of Proposals; Evaluate technical, quality and performance characteristic of a proposal and rank them in accordance with criteria and procedure for evaluating proposal set out in the request for Proposal document; Open financial proposals of those successful in their technical proposal; Best proposal shall be one with best combined evaluation in terms of the price and 			
	Competitive quotations (Shopping) GN. 446-R163	<ul style="list-style-type: none"> For diversified goods offering no commercial interest for any single supplier to tender for them For off the shelf or standard commodity specifications 	Up toTshs 120,000,000	Up toTshs 200,000,000	Up toTshs 100,000,000	Not applicable
	Minor value procurement GN. 446-R165	<ul style="list-style-type: none"> Basically a single source method for low value standard items for which prices from the selected sources are standard and there is no benefit to seek several quotations 	Up to 10,000,000	Up to 20,000,000	Up to 10,000,000	Not applicable
Micro value procurement GN. 446-R166	<ul style="list-style-type: none"> Mainly a cash based procurement method aimed at assisting PEs to obtain supplies easily from 	5,000,000	Not applicable	Not applicable	Not applicable	

A3.6 Emergency procurement

The provision for handling of emergency procurement is covered under **PPA 2011-S.65** as well PPR- R63 to 67. Emergency procurement provided for in the Act shall meet one of the criteria shown in **Box A3.1**. Under those circumstances, the Accounting Officer is allowed to proceed with procurement after obtaining the approval of the Government Procurement Services Agency (GPSA) and thereafter seek retrospective approval from the Paymaster General.

Despite of the approval procedure which is discussed below, **PPA 2011-S.65 (4)** gives a waiver with regard to procurement limits, methods, tender processing periods and advertisement, implying that a PE will not be compelled to comply with the provisions of the PPA 2011 and PPR 2013 as provided, however the tenders must be evaluated and award must be approved by the Tender Board – **PPA 2011-S.65 (6)**.

Box A3.1: Criteria for Emergency Procurement

- (i) compelling urgency that creates threat to life, health, welfare or safety of the public by reason of major natural disaster, epidemic, riot, war, fire or such other reasons of similar nature; and
- (ii) situation whereby, without the urgent procurement, the continued functioning of the Government or organization would suffer irreparable loss, the preservation or protection of irreplaceable public property, or the health or safety of public will be threatened.

Approval procedure of emergency procurement:

- Approval to proceed with emergency procurement shall be granted by the Government Procurement Agency (GPSA) within 5 days after receiving the application for approval for the same from the Accounting Officer – **GN.446-R.63(3)**;
- When it is impracticable to seek approval of GPSA, the Accounting Officer may proceed with emergency procurement in accordance with chosen procurement method and notify GPSA and PPRA, and later on seek retrospective approval of the Paymaster General within 7 days of the award of Contract – **GN.446-R.63 (5-9)**.
- PPRA is required to issue a format which shall be used to prepare a report on emergency procurement **GN.446-R.64 (2)** which is required to be submitted within 14 days to the Paymaster General, Controller and Auditor General, Internal Auditor General, PPRA and GPSA.
- Emergency procurement shall not apply for common use items and services **GN.446-R.66 (1)** and where a procurement was not included in the procurement plan, but is reasonable and justified, the Accounting Officer may approve re-allocation within his authority in order to carry out such procurement within the limits of minor and micro procurement values shown in **6th and 10th Schedule of GN. 446**.

Accounting Officer shall be held accountable where the so called emergency procurement is proved to be unnecessary and extravagant and was undertaken by lack of sight and timely action. A contract entered under such circumstances, even if not approved retrospectively, shall be valid and the Accounting Officer shall be responsible for the payment of the price involved **GN.446-R.67**. This provision is to safeguard a service provider who may not have the knowledge that a particular procurement in which he was awarded a contract did not follow procedures required under the law.

ANNEX 7: Procurement Records Keeping

Details of Records to be Included in the Procurement and Contract File.

Chronological Mapping of Procurement Records as per PPA and Regulations	
Ser. No.	Record
	A: Records to be Maintained in the Procurement File.
1.	Copy of Annual Procurement Plan
2.	Minutes of Management Meeting which approved the Procurement Plan
3.	Requisition of Procurement to initiate Process;
4.	Approval of Procurement Method
5.	Minutes of TB Meeting that approved tender advert, bidding documents (advert/specifications/TOR/ Statement of Requirements);
6.	Copy of Adverts/Invitation for Tenders/Quotations where non- open method was employed
7.	Tender Document/ RFP issued to Bidders (if any);
8.	Clarifications received & Issued to Bidders (if any);
9.	Minutes of Pre-bid meeting (if any);
10.	Amendments/addendum to Bidding Document/RFP issued to bidders (if any) including Notice of Extension of time for submission of bids (if any);
11.	Minutes of Tender Opening;
12.	Tenders submitted
13.	Letter of appointment of evaluation committee;
14.	Evaluation report with all the necessary attachments, particularly all correspondences with bidders regarding notification of arithmetic errors and acceptance of the same
15.	Deficiencies noted by Procurement Unit while reviewing the evaluation report and correspondence with the evaluation committee on the same
16.	Any Declaration of Interest by members of Tender Committee before adjudicating on a particular tender;
17.	Deficiencies noted by the Tender Committee while adjudicating on the Tender and their directives to Procurement Unit on the same;
18.	Minutes of the Tender Committee that approved recommendations of award;
19.	Letter of appointment of negotiation team (if any);

Chronological Mapping of Procurement Records as per PPA and Regulations	
Ser. No.	Record
20.	Approval of negotiation plan;
21.	Letter inviting firm to negotiate (letter of intent);
22.	Minutes of Negotiation
23.	Approval of contract award recommendation
24.	Report on any complaints received from the bidders;
25.	Letter of award/Letter of Acceptance;
26.	Letter of Notification of Unsuccessful bidders;
	B: Records to be Maintained in the Contract File
27.	Contract documents
28.	Approval of Contract documents
29.	Approval of contract amendments (if any);
30.	Copy of performance guarantee where applicable;
31.	Copy of Signed Contract;
32.	Copy of advance payment guarantee, where applicable
33.	Records for site handover where applicable;
34.	Notice to commence works/services where applicable;
35.	Instructions or Formal Communications;
36.	Approval for variation orders/ contract amendments where applicable;
37.	Variation orders/change order;
38.	Progress reports, where applicable;
39.	Letter of appointment of Inspection and Acceptance Committees for Goods
40.	Inspection and Acceptance Committee report;
41.	Certificates/Delivery Reports/ Goods Receiving Notes;
42.	Payment Certificates (Buildings and Civil Works) to be accompanied by testing results & measurement sheets where applicable;
43.	Letter of Credit/Invoices/ Payment Vouchers (for goods);

Chronological Mapping of Procurement Records as per PPA and Regulations	
Ser. No.	Record
44.	Claims submitted by the supplier, Contractor, consultant or service provider
45.	Claim Valuation Reports
46.	Disputes (if any) and how they were handled – Records of settlement proceedings
47.	Snag list (list of defect works to be corrected during defect liability period, if any)
48.	Final Inspection and Handover Report;
49.	Final Account and Contract Closure Report

ANNEX 8: Major Amendments to PPA 2011

S/n	Amendment	Particulars
1.	General Improvements	<ul style="list-style-type: none"> • Prudent use of market prices • Reducing procurement process / transaction costs • Increasing opportunity for participation of special social groups e.g. women, youth, elderly, people with disabilities • Promotion of industrial development using locally produced raw materials, products and services • Establishing and adopting government approved standards • Making special procedures for commercial oriented entities to procure inputs of production, etc
2	Specific Issues (PPRA related)	<ul style="list-style-type: none"> • PPRA in collaboration with AGO & Professional Bodies preparing, updating and issuing of authorized versions of standard Bidding Documents and other documents • PPRA to build capacity of stakeholders involved in public procurement • PPRA to obtain price information for standardized common items and services from relevant public bodies • Under Sect. 10(3) PPRA may order suspension of proceedings/implementation of any matter under investigation
3	Powers of PPRA	<ul style="list-style-type: none"> • Section 18(1): Powers of the authority • (e) excludes “tenderers” because of complaints review mechanism already in place • Section 23(2): Appointment of the CEO (of PPRA) need not be “registered” for professionals as there are other professions without registration
4	Functions of AO	<ul style="list-style-type: none"> • Section 36: Functions of the AO (l): emphasizes on submitting “details” and not just a list of procurement contracts awarded and Annual Procurement Plan (APP) for the next Financial Year (FY) (n): emphasizes on the use of Procurement Management Information System (PMIS) and e-procurement
5	Witnessing on Contract Signing	<ul style="list-style-type: none"> • New section 46A: Witnessing on contract signing As per the law or legal instrument establishing the Procuring Entity (PE) , or where not available any person enumerated under the Notaries Public and Commissioner for Oaths Act
6	Removal of “Closed” Framework Agreements	<ul style="list-style-type: none"> • Section 50(1): Removal of “closed” framework agreements within the procurement of Common Used Items and Services (CUIS) • (3): Open framework agreement contains specific terms and conditions but does not contain agreed price • New sections 55A-55D: Local content • Emphasis on local firms with 100% local ownership

S/n	Amendment	Particulars
7	Cool off Period Reduced to 7 Working Days	<ul style="list-style-type: none"> Section 60 (3): Cool off period reduced to 7 days Contract is formed when a written acceptance is communicated to the successful tenderer
8	Procurement Contract Entering Into Force	<ul style="list-style-type: none"> (10): A procurement contract “enters into force” when the formal contract is signed by parties to the contract
9	Selection of Procurement Methods	<ul style="list-style-type: none"> Section 64: Selection of methods of procurement (2)(c): Includes special groups, e.g. Women, youth, elderly, and persons with disability Instead of “restricting the issue of tenders” PE’s to set aside a specific percentage of the procurement volume to special groups
10	Procuring directly from Manufacturers, Dealers, Wholesalers or Service Providers	<ul style="list-style-type: none"> Section 65A: Procuring directly from manufacturers, dealers, wholesalers or service providers Certain goods and services Procedure to be prescribed in Regulations
11	Emergency Procurement	<ul style="list-style-type: none"> Section 65: Emergency procurement (1)-(2): Emphasis on “emergency “and not “urgent” Former subsection (3) and (4) deleted: GPSA no longer involved in approving emergency procurement
12	Established and Approved Standards of Items or Services to be Procured for Government Use	<ul style="list-style-type: none"> Section 65B: Established and approved standards of items or services to be procured for Government use: Standards to be issued by relevant Government organs Manner to be prescribed in Regulations Certain goods for Government use may not need approved procurement standards
13	Fraud, Corruption and Debarment	<ul style="list-style-type: none"> Section 83: Fraud, corruption and debarment (2): PE is expected to conduct due diligence and not investigation; Can only declare a bidder ineligible Corrupt practices can only be established by court of law and not by a PE Emphasizes that debarment can only be declared by the Authority and not by a PE
14	Establishment of Appeals Authority	<ul style="list-style-type: none"> Section 88: Establishment of Appeals Authority (4): Deleted; to enhance good governance and avoid dual role within the institutional framework Dual roles: resolving disputes and complaints while also serving as governing board (budget approving authority) Section 89: Appointment of Executive Secretary (3): Executive Secretary will not be supervised or directed by Appeals Authority Section 91: Funds of the Appeals Authority

S/n	Amendment	Particulars
		<ul style="list-style-type: none"> • (3): deleted as the Appeals Authority is no longer a governing board for approving banks for its accounts • Section 93: Annual Management Plan and Budget • The authority for approval is now the PS of the ministry responsible for finance, and not the members of PPAA
15	Right to Review	<ul style="list-style-type: none"> • Section 96: Settlement of complaints/disputes by AO <ul style="list-style-type: none"> (4): Bidder given 14 days instead of 28 days (6): AO given 7 days instead of 14 days • Section 97: Review by Appeals Authority <ul style="list-style-type: none"> (2): Bidder given 7 days instead of 14 days (after AO decision or expiry of time given to AO without decision) (3): Bidder given 7 days instead of 14 days (for contract already in force) (5): More remedies: <ul style="list-style-type: none"> (g) Compensation to PE for costs incurred if it wins the case; (h) Set aside, vary or confirm decision by PPRA to blacklist; (i) Any other order or relief as it may deem fit to grant
16	Review Proceedings and Judicial Review	<p>Section 99: Certain rules applicable to review proceedings (1) & (2): deleted to reduce time and cost of occasioned complaints by unsuccessful bidders Section 101: Judicial review</p> <p>(2)(b): A tenderer who is a public institution or a PE challenging the decision of the Appeals Authority: To state their positions to the AG immediately after the leave has been granted by the High Court</p> <p>(3): AG to state case containing positions of both parties and file a case marked "Case Stated" to the High Court for opinion.</p>
17	E-procurement	<ul style="list-style-type: none"> • New Section 63: e-procurement • (1): Emphasis on the use of e-procurement including PMIS by PEs • Manual procedures only where electronic facility is not available